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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 56.

WILLIAM A. COIT, APPELLANT,

vs.

THE NORTH CAROLINA GOLD AMALGAMATING COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED SEPTEMBER 24, 1883.

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1 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

JOHN W. HOFFMAN, Late Trading with Philip J. Potter Under the Firm Name of Potter and Hoffman, a Citizen of the State of Pennsylvania, and William A. Coit, a Citizen of the State of New York,

vs.

THE NORTH CAROLINA GOLD AMALGAMATING COMPANY, a Corporation Organized Under the Laws of the State of North Carolina and a Citizen of the said State of North Carolina, and Thomas J. Cram and Lloyd P. Smith, Citizens of the State of Pennsylvania.

2 UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } *ss:*

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of April session, 1880. No. —. In equity.

It is thus contained:

Be it remembered that on the twenty-ninth day of April, A. D. 1880, *came* the complainant, by his solicitors, Edward F. Hoffman and George Biddle, Esquires, comes into our said court here and files his bill of complaint against the defendants, which, being read, is as follows, to wit:

3 In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

Between—

JOHN W. HOFFMAN, Late Trading with Philip J. Potter Under the Firm Name of Potter and Hoffman, a Citizen of the State of Pennsylvania, and William A. Coit, a Citizen of the State of New York,

and

THE NORTH CAROLINA GOLD AMALGAMATING COMPANY, a Corporation Organized Under the Laws of the State of North Carolina and a Citizen of the said State of North Carolina, and Thomas J. Cram and Lloyd P. Smith, Citizens of the State of Pennsylvania.

To the honorable the judges of the said court:

Your orators complain—

(1.) The North Carolina Gold Amalgamating Company was and is a corporation duly organized under an act of the State of North Carolina dated January 30, A. D. 1874, and the corporators thereof were T. J. Cram, B. Arthur Mitchell, Augustine B. Crosby, Joseph G. Mitchell, Lloyd P. Smith, and their associates.

4 (2.) By the charter of the said corporation the maximum capital stock is fixed at $100,000, divided into one thousand shares of $100 each, with power to increase the capital to $2,500,000 or 25,000 shares of $100 each. The charter further provides "the subscription to the capital stock of said company shall and may be

paid in such instalments and in such manner and such property, real and personal, as a majority of the corporators may determine." The corporators, previous to obtaining this charter, had been engaged in mining operations, conducting these transactions as an unincorporated association under the same name and title which they subsequently assumed as a corporation upon the incorporation of the company. The capital stock of $100,000 was subscribed for by estimating the property of the association at the value of $100,000, and dividing the 1,000 shares representing the same among the original members in proportion to their respective interests, the said defendants, Thomas J. Cram and Lloyd P. Smith, receiving respectively 30 and 40 shares of the stock thus issued. The corporators placed their own valuation upon the property, which consisted solely of personal effects; and your orators aver that the valuation of the said personal property was illegally and fraudulently made by the said corporators at an amount far above its actual value, the said property consisting only of a machine for crushing ore, the right to use a certain patent called the "Crosby process," and the charter of the proposed corporation, and, in fact, the said articles had no market or actual value, and the capital stock issued thereon was not full paid or paid to any substantial extent, and the holders thereof were and are still liable to the corporation and its creditors for unpaid assessments thereon.

(4.) In the month of May, A. D. 1874, the said corporation increased its capital stock to $1,000,000, or 10,000 shares. Of this increased issue 4,000 shares were divided among the holders of the original capital stock upon the return and redelivery by them to the company of the original certificates, they themselves receiving four shares of the capital stock for each and every share returned. Certificates of this new issue of stock were duly issued to the holders of the original shares, and on or about the 12th day of May, 1874, such certificates were duly issued to the defendants, Thomas J. Cram and Lloyd P. Smith. No other consideration was ever paid by the said defendants, Thomas J. Cram and Lloyd P. Smith, nor by any other person receiving the said second certificates of stock than the delivery up to the company and cancellation of the original certificates received by them as corporators, and your orators aver that the said defendants then and there became liable, and still are liable, to pay to the said company the increased value of the second shares of stock over the first originally issued.

(5.) That your orators are judgment creditors of the said corporation defendant, the said Potter and Hoffman having obtained judgment against it for $1,746.96 and the said William A. Coit having obtained judgment for $5,489.82, and on issuing execution and pursuing it to its fullest extent your orators discovered that the said corporation was insolvent.

(6.) That your orators have frequently requested the officers of the said corporation to institute suit against the said defendants, Thomas J. Cram and Lloyd P. Smith, and other stockholders, for the collection of the amounts due and unpaid by

them to the company upon the shares of the capital stock held by them, but the said corporation is and always has been controlled by the said defendants, T. J. Cram and Lloyd P. Smith (the said T. J. Cram being the president thereof and the said Lloyd P. Smith being treasurer and director), and the said defendants have heretofore, under various pretences, refused to take any action in the premises or allow the name of the corporation to be used for the collection of the debts owing to it, as aforesaid, in order, your orators believe, to enable the said defendants to obtain the bar of the statutes of limitations.

(7.) Your orators aver that they can obtain no adequate relief at law in the premises and show that the name of all other persons holding the said shares of stock are unknown to them and cannot be ascertained except from the books and papers in the possession of the said defendants.

Your orators further aver that the said corporation is now,
8 and always has been since the time of the transactions between your orators and themselves, insolvent.

May it please your honors to grant to your orators a writ of subpœna to be directed to each of the said defendants commanding them at a certain day and under a certain pain to be therein limited to be and appear before this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises; and your orators pray specially—

(1.) That your orators may be at liberty to amend this their bill by adding thereto as plaintiffs all other creditors of the said corporation defendant who shall from time to time desire to join therein upon payment of their proper share of the costs of these proceedings.

(2.) That your orators may be at liberty to amend this their bill by adding as defendants thereto the names of such stockholders of the said corporation defendant as may be likewise indebted to the said corporation for unpaid subscriptions and shares to the said capital stock as their names may become known to them.

(3.) That a decree may be made commanding and direct-
9 ing the said stockholders defendants to pay to the said company so much of the debt due by them as aforesaid as may be sufficient to satisfy the just claim of your orators hereinbefore set forth.

(4.) Discovery.

(5.) That an order may be made directing the officers of the said company defendant to produce before your honorable court for the inspection of your orators all books, papers, and documents appurtenant hereto.

(6.) That a receiver may be appointed to collect and hold the payments made to the said company from the said stockholders by order of your honorable court in order that the same may be applied to the satisfaction of your orators' claim.

(7.) Further relief.

And your orators will ever pray, &c.

JOHN W. HOFFMAN,
W. A. COIT,
Per E. F. HOFFMAN, *Att'y.*

E. F. HOFFMAN,
GEO. BIDDLE,
Solicitors for Complainants.

10 (Endorsed:) No. 52. April sess., 1880. In the circuit court of the United States. In equity. Hoffman *et al. vs.* The North Carolina Gold Amalgamating Co. *et al.* Filed April 29, 1880. E. F. Hoffman, Geo. Biddle, for complainants.

11 And afterwards, to wit, on the 13th day of May, A. D. 1880, the defendants, Thomas J. Cram and Lloyd P. Smith, by their solicitor, R. C. McMurtrie, Esq., came into our said court here and file- their demurrer to the bill of complaint of the complainants, which, being read, is as follows, to wit:

C. C. U. S.

HOFFMAN
vs.
THE NORTH CAROLINA AMALGAMATING COMPANY *et al.* } No. 52.

APRIL, '80.

The demurrer of Thomas J. Cram and Lloyd P. Smith, defendants in the bill of complaint of John W. Hoffman and William A. Coit, against the said defendants and others in chancery exhibited.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in manner and form as the same are therein set forth, do*th* demur thereto, and for causes of demurer show:

(1.) That the suit is brought on behalf of a citizen of
12 Pennsylvania against citizens of the same State, and there is no other party defendant that has been or can be served with process and compelled to appear and litigate the matters mentioned in the bill except the citizens of Pennsylvania, and it is sought to do this at the suit of a citizen of the same State.

(2.) Because the bill seeks to enforce a right on the part of a debtor to the plaintiffs against two defendants as debtors to that debtor, or in some way liable to that debtor, and it is sought to do this in a proceeding in which that debtor cannot lawfully be compelled to appear, and that without that corporation being joined as a party and served there is no jurisdiction to hear and determine the matters alleged by the bill.

Wherefore and for divers other errors and imperfections these defendants demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill or

any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.
May 11, 1880.

R. C. McMURTRIE,
For Def'ts.

13 (Endorsed:) 52. April, 1880. C. C. U. S., E. D. Pa. In Eq. Hoffman *vs.* N. C. Gold Am'g Co. *et al.* Demurrer on behalf of Cram and Smith. Filed May 13, 1880. McMurtrie.

14 And afterwards, to wit, on the 25th day of October, A. D. 1880, this cause coming on be heard on demurrer to the bill of complaint, the court grant complainants leave to amend their bill.

And afterwards, to wit, on the 8th day of November, A. D. 1880, the complainants, by their solicitors, came into our said court here and file- an amendment to their bill of complaint, which, being read, is as follows, to wit:

In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

Between—

JOHN W. HOFFMAN, Late Trading with Philip J. Potter Under the Firm Name of Potter and Hoffman, a Citizen of the State of Pennsylvania, and William A. Coit, a Citizen of the State of New York,

and

THE NORTH CAROLINA GOLD AMALGAMATING
15 Company, a Corporation Organized Under the Laws of the State of North Carolina, and a Citizen of the said State of North Carolina, and Thomas J. Cram and Lloyd P. Smith, Citizens of the State of Pennsylvania.

April Session, 1880. No. 52.

And now, to wit, November 5, 1880, the court having granted leave, on motion of counsel the plaintiffs amend this bill by withdrawing John W. Hoffman, late trading with Philip J. Potter under the firm name of Potter and Hoffman, a citizen of the State of Pennsylvania, as coplaintiff in the bill.

(Endorsed:) U. S. C. C. April sess., 1880. No. 52. In equity. Hoffman *et al. vs.* Cram *et al.* Amendment to bill. E. F. Hoffman, G. Biddle. Filed November 8th, 1880.

16 And afterwards, to wit, on the 27th day of November, A. D. 1880, the complainants, by their solicitors, came into our

said court here and file- a further amendment to their bill of complaint, which, being read, is as follows, to wit:

In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

Between—

JOHN W. HOFFMAN, Late Trading with Philip J. Potter Under the Firm Name of Potter and Hoffman, a Citizen of the State of Pennsylvania, and William A. Coit, a Citizen of the State of New York,

and

THE NORTH CAROLINA GOLD AMALGAMATING COMpany, a Corporation Organized under the Laws of the State of North Carolina, and a Citizen of the said State of North Carolina, and Thomas J. Cram and Lloyd P. Smith, Citizens of the State of Pennsylvania.

April Session, 1880. No. 52.

17 And now, to wit, November 5, 1880, the court having granted leave, on motion of counsel the plaintiffs amend their bill by withdrawing John W. Hoffman, late trading with Philip J. Potter under the firm name of Potter and Hoffman, a citizen of the State of Pennsylvania, as coplaintiff in the bill.

And by altering paragraph five of said bill so as to strike out the words "The said Potter and Hoffman having obtained judgment against it for $1,746.96, and the said William A. Coit," and changing the words "orators are" into "orator is a," so as to make the whole of paragraph 5 of said bill read: "5. That your orator is a judgment creditor of the said corporation defendant, having obtained judgment for $5,489.82, and on issuing execution and pursuing it to its fullest extent your orator discovered that the said corporation was insolvent."

And by changing the word "orators" wherever it occurs in the said bill to the word "orator."

Nov. 24, 1880.

EDWARD F. HOFFMAN,
For Plaintiff, William A. Coit.

18 (Endorsed:) U. S. cir. court. E. D. of Pa. In equity. April sess., 1880. No. 52. Hoffman *et al v.* North Car. Gold Amal. Co. *et al.* Amendment to bill. Filed November 27, 1880. E. F. Hoffman, Geo. Biddle.

19 And afterwards, to wit, on the 5th day of January, A. D. 1881, the defendant, The North Carolina Gold Amalgamating Company, by its solicitor, R. C. McMurtrie, Esq., comes into our said

court here and files his answer to the bill of complaint of William A. Coit, complainant, which, being read, is as follows, to wit:

In the Circuit Court of the United States, Eastern District of Pennsylvania. In Equity.

COIT *vs.* THE NORTH CAROLINA GOLD AMALGAMATING COMPANY.

The answer of the North Carolina Gold Amalgamating Company to the bill of complaint of William A. Coit.

These defendants, reserving all exceptions, for answer to so much of the bill as they are advised it is necessary for them to answer, *for answer*, say:

They are advised and insist that the proposed remedy sought by the bill is barred by the statute of limitations and lapse of time.

The transaction under which the stockholders agreed to take stock at the organization of the corporation was closed on the thirteenth day of February, 1874, by their acceptance of the shares, and the acceptance of the price by the corporation. The transaction under which the additional shares were taken was completely closed on the twenty-second day of May, 1874, and, moreover, the said additional shares were actually surrendered and accepted by the company, and canceled on the 5th of November, 1874.

The bill in this case was filed on April 29th, 1880, and was demurred to and the demurrer allowed with leave to amend, and this amendment was made on November 8th and 29th, 1880.

And these defendants are advised that the cause of action, if any ever existed in the corporation against its stockholders for alleged subscriptions to the shares, occurred more than six years before the time at which the commencement of this suit is to be computed, and hence the claim is barred by the statute.

And these defendants, not waiving this defense, further aver as a reason why the appointment of a receiver should not be made that the whole indebtedness of the company, as well the disputed as the undisputed, is $131,737.56.

That the claims of the creditors pressing this suit amount to no more than $6,000.

That creditors have united in a protest in writing against such proceeding who hold claims amounting to $81,839,85.

Of these there are stockholders holding claims for-----	$49,712 00
Non-holders of stock----------	32,127 00

All of the other creditors (holding claims to the amount of about $43,000) reside out of this city, and all but one out of this State, but it is believed they would all join in this protest if they knew of the application for a receiver.

And these defendants, further answering, say:

1. They admit the allegations in the first paragraph of the bill.

21 2. They admit that there were some persons who had been engaged in extracting gold from ore under a patent process and which had been very successful, and others who had advanced money to these persons in the prosecution of their business, and that these two classes determined to organize a corporation and for this purpose they applied to the Legislature of North Carolina and obtained a charter, to which they refer and pray it may be deemed a part of this answer; by this charter the associates were authorized to subscribe for the stock and to pay their subscriptions in real and personal estate.

The clause in the charter reads thus:

"The subscriptions to the capital stock of said company shall and may be paid in installments and in such manner and in such property, real and personal, as a majority of the corporators herein named may determine;" and after providing that the stockholders should not be liable beyond the assets of the company they were further authorized to "make, alter, repeal, or amend such by-laws or regulations covering all points of organization and business not herein specifically provided for as they may deem necessary and proper;" and your orators were advised by counsel and believed that the plain meaning of such a charter was to authorize them to convert into capital the property they had then invested in the business and issue paid up shares for the same, and in fact they did so; and they never did enter into any contract for taking shares which involved them in a liability to contribute cash, nor yet made it a possible contingency that the property already engaged in the business might not be purchased by the company at the price of the par of the shares.

They were authorized to make the capital $100,000 and to
22 increase it to $2,500,000. The property they held consisted of the patent process for extracting gold from the ore, and a valuable lease of land for mill sites, and certain costly mills and milling machinery, and a contract to supply them with ore from certain lands out of which gold ore could be obtained, which ore, as a long experience had showed, yielded a large profit when subjected to the process which was possessed by the parties.

It was, therefore, at the meeting when the company was organized, agreed that the parties interested in the property should transfer the property to the corporation in satisfaction or payment of the capital agreed upon, $100,000, and that the shares should be issued to these parties in the proportion of their interests in the property thus transferred. Under this arrangement these persons became stockholders for the following number of shares which were thus paid for to this company:

The U. S. Gold and Silver Amalgamating Company of Virginia	300 shares.
Joseph G. Mitchell	100 "
B. A. Mitchell	100 "
A. B. Crosby	100 "
Barton H. Jenks	50 "

Christopher Bockius	25 shares.
T. J. Cram	30 "
Mrs. E. Taylor	20 "
John Hulme	30 "
Thomas H. Nielson	20 "
Lloyd P. Smith	20 "
Samuel K. Ashton	25 "
Martin Landenberger	100 "
Allen Middleton, Jr.	60 "
Estate of Joseph B. Mitchell (deceased)	20 "
Total	1,000 shares.

23 They deny that there was any fraudulent or illegal motive or conduct in regard to the valuation of the property agreed to be accepted in satisfaction of the shares, and they are advised that the charter conferred on the corporators the right to determine this valuation, and their discretion is not the subject of revision by any one. They also aver that, as the contract upon which the plaintiff's claim is based was that the subscription should be paid in this way, it is not competent, under the pretense of enforcing the right of the company to payment of subscriptions, to make a new contract or to enforce any other mode of performance than was agreed upon between the company and the corporators.

3. After the company was thus organized negotiations were opened for the purchase of the land in which were the ore mines, and for the ores mined therein which the corporation were working, and it was agreed with the person then professing to be the owner of said lands, and believed to be so, that there should be an arrangement made for uniting all the interests and converting the land into capital of the company, and the basis agreed upon was this:

The capital should consist of $1,000,000, or 10,000 shares.

The then present property of the corporation should be taken as representing 4,000 shares.

The land and all the buildings, mining machinery, and improvements thereon contributed should be taken for 2,000 shares, and the residue of the shares should be held for sale to procure money to carry on and extend the operations of the company.

The reason for doing this was that it was ascertained that the party who had contracted to furnish twenty tons of ore per day assaying at least twenty dollars per ton, and who was believed to own the land, could not perform his contract for want of capital to do the work of mining and delivering the ore.

24 The failure of the contractor to furnish the ore as he had agreed was the only source of the ultimate ill-success of the original scheme. This led to the changes above stated, and the delays incident thereon compelled cessation of work, and otherwise embarrassed the enterprise.

The new scheme was carried out and the new shares were issued, 4,000 of which were divided *pro rata* among the former shareholders on the surrender of the old certificates, which was a part of the

arrangement on which the scheme was based. The stockholders thus received four shares in the corporation as thus organized for each share they originally held.

4. Some time after this some strangers appeared, who claimed title to the land and all its ores and the mining improvements thereon, and began litigation therefor.

This unexpected difficulty, occurring shortly after the death of its first president, the late Mr. John Hulme, upon whose long experience in the reduction of gold ores in North Carolina, command of capital, and knowledge of the immense capabilities of the company's property it greatly relied, finally paralyzed the operations of the company, as it required cash capital for its successful working, and the sale of shares was impossible with this cloud on the title.

5 To overcome this difficulty, negotiations were opened for effecting a settlement of the dispute, and it was agreed by the company and the parties holding an adverse interest that the company should purchase that interest and pay for it in shares, and as a preliminary that the nominal capital should be retained at $1,000,000, and that the holders of stock in the company should each surrender four shares and receive one share in place thereof, and in fact they did so, thus replacing each original shareholder in the position he occupied before the increase of the stock, as respects the number of shares and the par value, but reducing his relative interest in the property of the company far below what it had been originally.

6. It is true that the complainant has obtained judgment and has failed to obtain satisfaction upon issuing execution.

It is untrue that the company has been "repeatedly" requested to proceed against the stockholders to recover what is alleged to be unpaid subscriptions on stock, and it is true that no such proceedings have been instituted, and this for several reasons. But it is admitted that the counsel of the present plaintiff once asked leave to bring such suits, but in whose name or for whose benefit has never been stated. Permission to bring suit by any one in the name of the company against its stockholders could not be granted, because:

I. There never had been any subscription or undertaking to take and pay for stock that had not been already completely performed by the receipt by the company of the consideration agreed upon as the price of such issue.

II. There has never been any pretense or holding out to the world that the capital was composed of or made up in any other way than has actually been done.

III. There has never been an agreement to subscribe and pay cash for shares. All contracts for shares have been as authorized by the charter to deliver and take property, and this has always been complied with.

IV. All the shares in the increased capital which, by the bill, it is alleged the corporation ought to require payment for, were surrendered to the corporation at its request, in pursuance of an arrangement *bona fide* entered into in the expectation of relieving the cor-

poration from the disputes as to title, which were believed to
26 be the only hindrance to a prosperous business. These shares had never been subscribed for or agreed to be paid for. They had been agreed to be issued and accepted in lieu of existing shares on a new plan of organization by the admission of a new member and a contribution of additional property. The officers believed it to be impossible to exact a price for stock except what was agreed to be paid, after accepting such payment, and especially after the stock had, on request of the company, been returned and canceled.

V. Their opinion on these matters was confirmed by the fact that the attorney for the plaintiff had himself brought a suit in the courts of Pennsylvania against two of the stockholders, who alone have been made parties to this bill, in which the issue joined was, whether any debt or pecuniary liability existed by the said stockholders to the corporation by reason of the transactions in these stocks.

One of these causes was tried on its merits, and the result was that the judge directed a nonsuit, on the ground that there was no liability on the part of these shareholders to pay for any shares otherwise than as they had paid for them. These are the reasons which are, by the bill, styled pretenses why suits were not instituted.

VI. Beside this, there was, as regards the present defendants, another quite sufficient reason: The company is indebted, in an amount beyond the alleged liability, to each of these two defendants for money lent and services rendered under a contract, and for this indebtedness one of the defendants has judgment.

VII. It is utterly untrue that the corporation has been prevented from suing in order to give the defendant stockholders the benefit of the statute of limitations.

27 In truth, the contracts under which it is alleged a pecuniary liability arose were all entered into after taking the advice of the best counsel that could be procured in North Carolina that by the law of that State these things could be done without incurring any risk of any further liability than the stockholders agreed to incur, and did satisfy by performance. The company was thus further strengthened in the belief that they had no claim on the stockholders for anything beyond what had been received by them.

VIII. These defendants further say that if it shall appear to the court that there is a right on their part to demand any payment from the said stockholders they are prepared and willing to enforce that right, if indemnified by the plaintiff for costs and expenses; and they insist that there are no grounds to warrant the loading them with the additional expense as proposed by the bill, inasmuch as all the questions that are open between the corporation and the shareholders are raised in this suit, and can be litigated by the complainant in the name or with all the rights of the corporation, or of a receiver, if such were appointed, at the expense of the complainant.

IX. These defendants further answer and say that the stockholders of the company who accepted the shares into which the increased cap-

ital was divided are set forth in Schedule A, with the number of the shares thus accepted; and they further say that they are prepared and willing to make discovery of any matters that are deemed material to the controversy, and also to produce any books, papers, or documents that may be indicated as material which are in their custody or control.

All which matters and things are true, without this, that any other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for this defendant to
28 make answer unto and not herein hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

SCHEDULE A.

To fully understand this, it must be observed that not the same number of the old original paid-up one thousand shares, issued 13th to 17th of February, 1874, were held by all the same persons when the new stock was issued of the increased capital; some considerable of the old stock had been sold to persons in the market prior to 22d of May, 1874, and held by these new persons when the new or increased capital stock was issued, four shares to one share surrendered 22d of May, 1874.

Names of holders of old stock who received of the increased capital stock 10,000 shares, issued 22d of May, 1874.	Old shares. Number held by each, and surrendered.	New shares. Number received by each 4 for 1. Old surrendered.
1. U. S. Gold and Silver Amalgamating Co., of Virginia	145	580
2. Jos. G. Mitchell, dec.	40	160
3. B. A. Mitchell	25	100
4. A. B. Crosby	80	320
5. Barton H. Jenks	10	40
6. Christopher Bockius	15	60
7. Mrs. M. E. Taylor, dec.	20	80
8. T. J. Cram	40	160
9. John Hulme, dec.	30	120
Carried forward	405	1,620
29 Brought forward	405	1,620
10. Lloyd P. Smith	50	200
11. Thos. H. Neilson	20	80

Names of holders of old stock who received of the increased capital stock 10,000 shares issued 22d of May, 1874.	Old shares. Number held by each, and surrendered.	New shares. Number received by each 4 for 1. Old surrendered.
12. Samuel K. Ashton	25	100
13. Martin Landenberger	100	400
14. Allen Middleton, Jr	60	240
15. Estate of Joseph B. Mitchell, dec.	65	260
16. John J. Smith	10	40
17. Ferdinand Allen	25	100
18. Virginia C. Boggs	3	12
19. Emily Boggs	3	12
20. Carrie Boggs	3	12
21. Mrs. T. J. Cram, dec.	1	4
22. Mrs. Ann Eliza Hall	47	188
23. John R. Hall	20	80
24. William F. Mitchell	28	112
25. A. F. Porter, dec	10	40
26. Mary A. Neilson	15	60
27. Emma L. Bockius	5	20
28. James F. Calkins	5	20
29. Robert C. Simpson	8	32
30. M. H. Cobb	3	12
31. Jacob D. Mitchell	20	80
32. B. K. Jamison & Co	40	160
33. H. Fish & Co	5	20
34. Mrs. Emma P. Haskins	10	40
35. Emmons T. Mockridge	5	20
36. William B. Buck	4	16
37. Henry H. Barton	5	20
	1,000	4,000
38. Amos Howes, who put in the lands, with all the Gold Hill mines therein, mining machinery and improvements thereon	0	1,000
39. William H. Bailey, trustee, holding for security for Howes' performance of his covenants to the company	0	1,000
	0	2,000
40. Retained in the treasury for sale	0	4,000

30 The figures in the first column express the shares of the

original full-paid-up stock—one thousand shares—surrendered for the new stock, one for four.

The figures in the second column express the shares received of the new stock of ten thousand shares, four for one of the old surrendered.

The shares in the second column (with the exception of one hundred and fifty of the two thousand allotted to Amos Howes) were all, under a resolution of stockholders, surrendered November 5th, 1874, and canceled, and one share to each holder was issued in lieu; this upon the proposition for quieting the title and for receiving money for paying off the company's debts, &c.

[SEAL.]

T. J. CRAM,
President N. C. G. A. Co.

(Endorsed:) 52. April, 1880. C. C. U. S. Eq. Coit *vs.* North Carolina Gold Am. Co. *et al.* Answer of the N. C. Gold Am'g Co. Filed January 5, 1881.

31 And afterwards, to wit, on the day and year last aforesaid, the defendants, Thomas J. Cram and Lloyd P. Smith, two of the defendants, by their solicitor, R. C. McMurtrie, Esq., come into our said court here and file their answer to the bill of complaint of William A. Coit, which, being read, is as follows, to wit:

The Joint and Separate Answers of Thomas J. Cram and Lloyd Smith to the Bill of Complaint of William A. Coit.

In the Circuit Court of the United States, Eastern District of Pennsylvania. In Equity.

These defendants, as to so much of the bill as they are advised it is necessary for them to answer, say:

They are advised and insist that the proposed remedy sought by the bill is barred by the statute of limitations and lapse of time.

The transaction under which the stockholders agreed to take stock at the organization of the corporation was closed on the thirteenth day of February, 1874, by their acceptance of the shares and the acceptance of the price by the corporation. The transaction under which the additional shares were taken was completely closed on the twenty-second day of May, 1874; and, moreover, the said additional shares were actually surrendered and accepted by the company and canceled on the 5th of November, 1874.

32 The bill in this case was filed on April 29th, 1880, and was demurred to and the demurrer allowed with leave to amend, and this amendment was made on November 8th and 29th, 1880.

And these defendants are advised that the cause of action, if any ever existed in the corporation against its stockholders for alleged subscriptions to the shares, occurred more than six years before the time at which the commencement of the suit is to be computed, and hence the claim is barred by the statute.

And these defendants, not waiving this defense, further answering, say:

Some time in 1874 a number of persons were already interested in

a gold-ore-reduction operation in Virginia and North Carolina, being owners of a patented process, known as the "Crosby process," for extracting gold from ore, which had proved extremely profitable, and they were owners of a mill and had made a contract for the supply of the ore at a price which rendered the working extremely profitable. These defendants had been induced to advance large sums to the parties concerned to aid in the enterprise, and it was proposed to organize a corporation to take the place of the parties concerned by capitalizing the assets and liabilities and issuing stock therefor in the proportion of the respective interests of the parties.

These defendants, being creditors for advances to the parties interested, were so well convinced of the desirableness of the arrangement that they consented to convert their claims for money lent into shares, the property subject to the debts being valued at $100,000.

This arrangement being agreed upon an application was made to the State in which the operations were to be carried on for a special charter to enable them to carry out their undertaking and to exempt them from personal liability in so doing.

33 The charter was granted January 30th, 1874, and accepted; and, in pursuance of its provisions, the parties organized a company upon these terms, viz:

The capital was fixed at $100,000, and consisted of the assets of the adventurers in the scheme, the shares paid by the contribution thereof being issued to the parties in the proportion of their interests, the shares issued to these defendants being to Thomas J. Cram, 30 shares; Lloyd P. Smith, 20 shares, which were to be and were accepted as payment of the debts due them respectively by the company of adventurers, and for which they held an agreement to give them a proportionate interest in the property of the adventurers embarked in the enterprise, valued at $137,000.

These defendants deny all fraud or illegality in the transaction. They were advised by counsel and believed the scheme was legal. They knew that no fraud was intended, as they paid for the shares in the manner stated by extinguishing debts that were believed to be well secured.

After the working of, the reduction of, and the extraction of the gold from the ore began it was ascertained that the contractor for delivering ore could not comply with his contract for want of adequate capital.

There was no other reason for the want of success. It had been ascertained that the ore possessed the requisite richness; that the process enabled the company to extract the gold at a very large profit and to do this on a scale that made the returns a profitable business on the capital.

To meet this contingency it was proposed that the contractor for the ore should abandon his contract and contribute the land, with all the mines and mining improvements thereon, as capital.

That the capital stock should be increased to $1,000,000, a
34 portion of which should be issued to the owners of the joint property, the stockholders surrendering their original shares, and that the remainder of the capital stock should be sold for cash.

The scheme was carried out as agreed upon. The land and improvement owner received two thousand shares; the old stockholders received four thousand shares, each getting four new for one old surrendered, and the rest (four thousand) was retained for sale.

The agent appointed to negotiate the sale became sick, and was thus prevented for a time from acting; and during this a third party appeared and claimed the land, with the mines and improvements thereon, and brought suit for it.

Up to that time the business prospects of the company were so good that these defendants advanced large sums to it by way of loan, amounting to $6,000 and $7,000, or thereabouts, respectively (which loans were afterwards increased), and one of them also entered into the employ of the company as consulting engineer, and devoted much of his time to them, trusting to their capacity to pay.

The suit for the title to the land put an end to the expected raising cash capital to work the mines in the lands by sale of shares.

Then, to harmonize interests, a new scheme was adopted and carried out in part. The adverse claimants for the land agreed that if the capital should remain fixed at $1,000,000, and the certificates outstanding should be surrendered, and new certificates accepted for the same number of shares as had been originally issued and paid for, they, on their part, would contribute their interest in the land and take shares therefor, and also, in exchange for shares at par, furnish capital to work the mines and pay all the debts of the company.

The company agreed to this, and these defendants accord-
35 ingly surrendered the certificates they had received and accepted others in their place, T. J. Cram receiving forty shares and L. P. Smith receiving fifty shares. Some of these were issued in right of shares purchased by these defendants from other shareholders.

But the claimants of the land utterly failed to carry out their part of the contract. The consequence was that a large debt secured by mortgage on the property, subject to which the company took it, became due, and the property was sold under it by the sheriff.

These defendants deny that they owe any money for the stock they have received.

As to the first issue, they have paid for it as agreed upon.

As to the second, it was an exchange to meet the views of the company and of a new contributor.

And the increased number of shares received by them of this second issue were all in good faith surrendered to the company at its request and canceled in the course of an arrangement *bona fide* expected to settle the title and make the business profitable.

They have never entered into any contracts which, in form and substance, have not been complied with, nor have they ever entered into any contract not authorized to be so made by law.

They further say they were sued by the attorney of the plaintiff in the present case in the courts of Pennsylvania for this very claim or cause of action, and in a cause in which the very same question was raised, viz: Were they indebted to the company for the alleged

subscriptions, or by reason of having taken this stock? The cause was tried on the merits, and there was no evidence bearing on the case not produced, and there were no technical questions raised which prevented the cause being tried on the merits. And it was then decided that the defendant Cram was not indebted to
36 the company, because of his acts in agreeing to take and taking the stock of the company. The case against the defendant Smith was identical in fact, and was never pressed for trial after this decision.

They further aver that they are creditors of the corporation. There is due T. J. Cram $13,382.81, and he has recovered a judgment for this sum against the company, and there is due L. P. Smith $15,145.46 for money lent and services performed as president. These two defendants are in fact the largest creditors of the company. It is true that the company has been requested to permit these defendants to be sued for these alleged subscriptions, as stated in their answer, and that such consent has not been given, because the subscriptions that were made were paid, as it was agreed they should be paid, when the subscription was made. And as to the increased capital, it never was subscribed or agreed to be taken, otherwise than in exchange for old shares surrendered as above stated.

The company therefore declined permitting the proposed suits to be instituted, and the result of the suit above referred to proves that suits brought in the name of the company could not have succeeded if they had been authorized; and the company believed it could not honestly sue and attempt to compel parties to pay what they had not agreed to pay after the company had received what had been agreed to be received for the stock.

All which matters and things are true, without this, that any other matter, cause, or thing in the said complainant's said bill of complainant contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants, all
37 which matters and things these defendants are ready and willing to aver and maintain and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

T. J. CRAM.
LLOYD P. SMITH.

Thomas J. Cram and Lloyd P. Smith, being severally and duly sworn or affirmed, say that the facts stated in the foregoing answer of their own knowledge are true, and those stated upon information or belief they believe to be true.

T. J. CRAM.
LLOYD P. SMITH.

Sworn or affirmed and subscribed before me this 4th day of Jan'y, 1881.

[SEAL.] JOHN RODGERS,
Notary Public.

(Endorsed:) 52. April, 1881. C. C. U. S. Eq. Coit *vs.* N. C. Am'g Co. *et al.*

Joint and Separate Answers of T. J. Cram and L. P. Smith. Filed January 5, 1881.

38 And afterwards, to wit, on the 5th day of February, A. D. 1881, the complainant, by his solicitors, leave of the court being first had and obtained, files his amendment to his bill of complaint, which, being read, is as follows, to wit:

In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

Between—

WILLIAM A. COIT, a Citizen of the State of New York, *and* THE NORTH CAROLINA GOLD AMALGAMATING CO., a Corporation Organized Under the Laws of the State of North Carolina and a Citizen of said State of North Carolina, and Thomas J. Cram and Lloyd P. Smith, Citizens of the State of Pennsylvania.	April Sessions, 1880. No. 52.

To the honorable judges of the said court:

Your orator complains—

(1.) The North Carolina Gold Amalgamating Company was and is a corporation duly organized under an act of the State of North Carolina, dated January 30th, A. D. 1874, and the corporators were T. J. Cram, B. Arthur Mitchell, Agustine H. Crosby, Joseph G. Mitchell, Lloyd P. Smith, and their associates.

(2.) By the charter of the said corporation the minimum capital stock is fixed at $100,000, divided into one thousand shares of $100 each, with power to increase the capital to $2,500,000, or 25,000 shares of $100 each. The charter further provides: "The
39 subscription to the capital stock of said company shall and may be paid in such instalments and in such manner and such property, real or personal, as a majority of the corporators may determine." The corporators previous to obtaining this charter had been engaged in mining operations, conducting these transactions as an unincorporated association under the same name and title which they subsequently assumed as a corporation. Upon the incorporation of the company the capital stock of $100,000 was subscribed for by estimating the property of the association at the value of $100,000 and dividing the 1,000 shares representing the same among the original members in proportion to their respective interests, the said

defendants, Thomas J. Cram and Lloyd P. Smith, receiving respectively 30 and 40 shares of the stock thus issued. The corporators placed their own valuation upon their own property, which consisted solely of personal effects, and your orator avers that the valuation of the said personal property was illegally and fraudulently made by the said corporators at an amount far above its actual value, the said property consisting only of a machine for crushing ore, the right to use a certain patent called the "Crosby process," and the charter of the proposed corporation, and in fact, the articles had no market or actual value, and the capital stock issued thereon was not full paid or paid to any substantial extent, and the holders thereof *who* and are still liable to the corporation and its creditors for unpaid assessments thereon.

(3.) In the month of May, A. D. 1874, the said corporation increased its capital stock to $1,000,000, or 10,000 shares. Of this increased issue 4,000 shares were divided among the holders of the original capital stock upon the return and redelivery by them to the company of the original certificates, they themselves receiving four shares of the capital stock for each and every share returned. Certificates of this new issue of the stock were duly issued to the holders of the original shares, and on or about the 12th day of May, 1874, such certificates were duly issued to the defendants, Thomas J. Cram and Lloyd P. Smith. No other consideration was ever paid by the said defendants, Thomas J. Cram and Lloyd P. Smith, nor by any other person receiving the said second certificates of stock than the delivery up to the company and cancellation of the original certificates received by them as corporators, and your orator avers that the said defendants then and there became liable, and still are liable, to pay to the said company the increased value of the second shares of stock over the first originally issued.

(4.) That your orator is a judgment creditor of the said corporation defendant, having obtained judgment for $5,489.82, and on issuing execution and pursuing it to its fullest extent your orator discovered that the said corporation was insolvent.

(5.) That your orator has frequently requested the officers of the said corporation to institute suit against the said defendants, Thomas J. Cram and Lloyd P. Smith, and other stockholders, for the collection of the amounts due and unpaid by them to the company upon the shares of the capital stock held by them; but the said corporation is, and always has been, controlled by the said defendants, T. J. Cram and Lloyd P. Smith (the said T. J. Cram being the president thereof, and the said Lloyd P. Smith being treasurer and director), and the said defendants have heretofore under various pretences refused to take any action in the premises or allow the name of the corporation to be used for the collection of the debts owing to it, as aforesaid, in order, your orators believe, to enable the said defendants to obtain the bar of the statute of limitations.

(6.) Your orators aver that they can obtain no adequate relief at law in the premises, and show that the names of all other persons

holding the said shares of stock are unknown to them, and cannot be ascertained, except from the books and papers in the possession of the said defendants.

(7.) Your orator further avers that the said corporation is now, and always has been, since the time of the transaction between your orator and themselves, insolvent.

May it please your honors to grant to your orator a writ of subpœna to be directed to each of the said defendants, commanding them at a certain day and under a certain pain, to be therein limited, to be and appear before this honorable court, and then
41 and there full, true, direct, and perfect answer make to all and singular the premises; and your orator prays specially:

(1.) That your orator may be at liberty to amend this his bill by adding thereto as plaintiffs all other creditors of the said corporation defendants who shall from time to time desire to join therein upon payment of their proper shares of the costs of these proceedings.

(2.) That your orator may be at liberty to amend this his bill by adding the names of such stockholders of the said corporation defendants as may be likewise indebted to the said corporation for unpaid subscriptions and shares to the said capital stock as their names may become known to them.

(3.) That a decree may be made commanding and directing the said stockholders defendants to pay to the said company so much of the debt due by them as aforesaid as may be sufficient to satisfy the just claim of your orator hereinbefore set forth.

(4.) Discovery.

(5.) That an order may be made directing the officers of the said company defendant to produce before your honorable court for the inspection of your orator all books, papers, and documents appurtenant thereto.

(6.) That a receiver may be appointed to collect and hold the payments made to the said company from the said stockholders by order of your honorable court, in order that the same may be applied to the satisfaction of your orator's claim.

(7.) Further relief.

And your orator will ever pray, &c.

42 *Amendment to Bill.*

In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

Between—

WILLIAM A. COIT, a Citizen of the State of New York,
and
THE NORTH CAROLINA GOLD AMALGAMATING COMPANY, a Corporation Organized Under the Laws of the State of North Carolina, and a Citizen of the said State of North Carolina, and Thomas J. Cram, and Lloyd P. Smith, Citizens of the State of Pennsylvania.

April Session, 1880. No. 52.

And now, February 5th, 1881, on motion of Edward F. Hoffman and George Biddle, Esqs., for the plaintiff, by leave of the court first had and obtained, and in accordance with prayer 2 of the bill, the plaintiff adds the names of the other stockholders of the said company as parties defendant to this suit, and makes the following amendment to the bill:

Add after the words Lloyd P. Smith—in the names of the parties defendant—U. S. Gold and Silver Amalgamating Company of Virginia, A. G. Elliott and Joseph B. Mitchell, executors of Joseph
43 G. Mitchell, deceased; B. A. Mitchell, A. B. Crosby, Barton H. Jenks, Christopher Bockius, executors of Mrs. M. E. Taylor, deceased; F. M. Lewis, executor of John Hulme, deceased; Thomas F. Neilson, Samuel K. Ashton, Martin Landenberger, Allen Middleton, Jr., Ann Mitchell, executrix of Joseph B. Mitchell, deceased; John Jay Smith, Ferdinand Allen, Virginia C. Boggs, Emily Boggs, Carrie Boggs, Caroline Boggs, and Virginia Boggs, executors of Mrs. Thomas J. Cram, dec'd; Mrs. Ann Eliza Hall, John R. Hall, William F. Mitchell, Elizabeth A. Porter, administratrix of A. F. Porter, deceased; Mary A. Neilson, Emma L. Bockius, James F. Calkins, Robert C. Simpson, M. H. Cobb, Jacob D. Mitchell, B. K. Jamison & Co., H. Fish & Co., Mrs. Emma P. Haskins, Emmons T. Mockbridge, William D. Buck, Henry H. Barton, Amos Howes, William H. Bailey, citizens of the State of Pennsylvania.

(Endorsed:) No. 52. April sessions, 1880. Circuit court U. S. In equity. William A. Coit, a citizen of New York, *vs.* The North Carolina Gold Amalgamating Company, a citizen of the State of North Carolina, and Thomas J. Cram, Lloyd P. Smith, U. S. Gold and Silver Mining Company of Virginia, A. G. Elliott and Joseph B. Mitchell, executors of Joseph G. Mitchell, deceased; B. A. Mitchell, A. B. Crosby, Barton H. Jenks, Christoper Bockius, executors of Mrs. M. E. Taylor, deceased; F. M. Lewis, executor of John Hulme, deceased; Thomas F. Neilson, Samuel K. Ashton, Martin Landenberger, Allen Middleton, Jr., Ann Mitchell, executrix of Joseph B. Mitchell, deceased; John Jay Smith, Ferdinand Allen, Virginia C. Boggs, Emily Boggs, Carrie Boggs, Caroline Boggs, and Virginia Boggs, executors of Mrs. Thomas J. Cram, deceased; Mrs. Ann Eliza

Hall, John R. Hall, William F. Mitchell, Elizabeth A. Porter, administratrix of A. F. Porter, dec'd; Mary A. Neilson, Emma L. Bockius, James F. Calkins, Robert C. Simpson, M. H. Cobb, Jacob D. Mitchell, B. K. Jamison & Co., H. Fish & Co., Mrs. Emma P. Haskins, Emmons T. Mockbridge, William D. Buck, Henry H. Barton, Amos Howes, William H. Bailey, citizens of the State of Pennsylvania. Amendment to bill. Edward F. Hoffman, George Biddle, for plaintiffs. Filed February 5, 1881.

44 And afterwards, to wit, on the 30th day of April, A. D. 1881, the defendant, Henry H. Barton, by his solicitor, George Junkin, Esq., comes into our said court here and files his answer, which, being read, is as follows, to wit:

In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

WILLIAM A. COIT *vs.* "THE NORTH CAROLINA GOLD AMALGAMATING COMPANY" *et al.*	April Sess., 1880. No. 52.

The answer of Henry H. Barton, one of the defendants to the bill as amended filed in this case.

To so much of the said bill as he is advised that it is necessary for him to answer he says:

I. Some time early in 1874 Christian Bockius asked defendant to loan him some money, offering as collateral security some shares of stock of the said corporation defendant. Defendant did not
45 make the loan, but upon the representation of said Bockius as to the value of said stock he bought the same from him for six hundred dollars, which sum he paid, and received a certificate for five shares of the stock of said corporation defendant. Defendant never subscribed for said stock in any way, but bought the same as full paid-up stock, and had nothing to do with the said company prior to the said purchase, and had no knowledge in regard to its organization or the mode in which said stock was paid for.

In May, 1874, under a plan for reorganization of said company, he surrendered said certificate for said five shares and received certificate for twenty shares of said stock. In November, 1874, this plan for reorganization was reconsidered and cancelled, and defendant surrendered the said certificate for twenty shares, and the same were, about November 9th, 1874, cancelled. Defendant was entitled to get a certificate for his said original five shares, but he never did get the same, and he is now the owner of only the said five original shares, for which he paid six hundred dollars, and for which he has not even a certificate.

46 II. Defendant is advised and insists that the proposed remedy sought by the plaintiff's bill is barred by the statute of limitations and by the lapse of time, he having purchased his said shares, as hereinbefore mentioned, without any notice for full value,

and this bill not having [been] filed against him until third of March, 1881, and the new allotment of shares having been made on May 22nd, 1874, which were subsequently surrendered and cancelled about November 9th, 1874, so that the said cause of action, if any existed, no longer survives, but is barred by the lapse of more than six years, and is extinguished by this lapse of time and by the neglect and laches of the plaintiff.

III. The defendant, upon information, suggests and avers that the plaintiff did not become a creditor of said company (if ever he was such, and of which defendant has no personal knowledge, and demands that he may be required to make due proof) after the date of the said new allotment of shares on May 22nd, 1874, but before that date, and that no credit therefor was given by the
47 plaintiff to the corporation defendant on the faith of the said alleged subsequent new issue of shares, his debt having been contracted prior thereto, and the original shares being full- paid for by this defendant to the holder thereof at the time of said purchase as aforesaid, and this defendant never having been a subscriber to said stock, but merely a purchaser thereof from a holder by whom they had been fully paid up, defendant, upon information, suggests that the debt claimed by the plaintiff as due him by the corporation defendant has or is for instalments on a third mortgage held by him at the date of the original purchase by the said company of its real estate upon the same, and which the said company assumed to pay as part of the purchase-money on consideration for said purchaser, and that plaintiff foreclosed said mortgage, and that the said property so mortgaged was purchased by one Holmes, of Salisbury, North Carolina, in 1875, under said foreclosure proceedings, and that he still holds the same.

48 IV. This defendant denies all fraud or illegality whatever in his purchase and dealings with the said shares and said company, and as to the facts and reasons concerning the increase of the capital stock and the surrender of the said shares under the resolution of the company of May 22nd, 1874, and the subsequent surrender of the new shares under the resolution of November 5th, 1874, he desires, without repetition, to adopt as his own and as correct, so far as he knows and has been informed, the answers in reference thereto of the corporation defendant, T. J. Cram and Lloyd P. Smith, heretofore filed in this cause, and the facts therein set forth.

V. This defendant denies that he ever subscribed for or agreed to pay for the additional shares issued to him about May 22, 1874, and which shares were surrendered to and cancelled by the company on November 9, 1874, which shares were issued pursuant to a new plan of organization as substitutinary of the original shares in the names and for the purposes set forth in the answer of said corpora-
49 tion defendant filed in this cause heretofore, and said shares were in no sense issued to be sold to or paid for by new subscribers, nor were any in fact so sold; and the effect of said cancellation of said stock was simply to place the original shares in the same position in which they were before the said intended increase

of stock as to the number of shares and the par value, while their relative value was not reduced below their original value, and no prejudice resulted to the company or its creditors.

VI. This defendant again insists that the plaintiff is barred by his laches and acquiescence for over six years and by not filing his present amended bill against defendant, and especially, in view of the facts which defendant, upon information, avers to be true, that during all of said time the plaintiff well knew of the said attempted increase of the shares of stock and of the subsequent surrender and cancellation of the same, and he then had, if a prior or existing creditor, as complete a right of action as he now has, and he ought then to have commenced his suit when all the parties and
50 witnesses were alive and accessible instead of delaying his claim and suit unreasonably to the present time without good reason or excuse, to the prejudice of the defendant; and defendant submits that the plaintiff as an alleged creditor, with full notice, has thus recognized all the said arrangements and acquiesced in the same, and is estopped thereby.

VII. Defendant further shows to the court and avers that the charter of the company defendant authorizes payment for stock to be made in personal property, and that as to creditors prior to said attempted increase of stock in May, 1874, in which class, if at all, the plaintiff is, the said company was competent and legally authorized to agree that the said new issue of stock should be full paid by the surrender of the old shares to it in lieu of the new ones so issued, which in reality only represented and were substitutes for the said old original shares.

51 All which matters and thing are true, without this, that there is any other matter, cause, or thing in the plaintiff's bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver and maintain and prove as this honorable court shall direct, and he hereby prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

HENRY H. BARTON.

GEO. JUNKIN,
Solicitor for Henry H. Barton.

52 Henry H. Barton, being duly sworn, says that the facts set forth in his foregoing answer stated upon his own knowledge are true, and those stated upon information he believes to be true.

HENRY H. BARTON.

Sworn and subscribed before me this 30th day of April, A. D. 1881.

[SEAL.] CHARLES IRVIN JUNKIN,
Notary Public.

(Endorsed:) 52. April sess., 1880. U. S. C. C. In equity. Wil

liam A. Coit *vs.* "The North Carolina Gold Amalgamating Company" *et al.* Answer of Henry H. Barton. Filed April 30, 1881. Junkin, att'y for H. H. Barton.

53 And on the day and year last aforesaid the defendants, Virginia C. Boggs, Emily Boggs, and Carrie Boggs, as executrices of Mary Cram, by their solicitor, Pierce Archer, Esq., file their joint and separate answers to the bill of complaint of William A. Coit in the words following, to wit:

In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

The joint and separate answers of Virginia C. Boggs, Emily Boggs, and Carrie Boggs, and also of the said V. C. Boggs and Carrie Boggs, as executrices of the will of Mary Cram, deceased, to the bill of complaint of Wm. A. Coit.

These defendants, as to so much of the bill as they are advised it is necessary for them to answer, say:

1. They are advised and insist that the proposed remedy sought by the plaintiff's bill is barred by the statute of limitations and by lapse of time before the bringing of said suit against them on the 11th of March, 1881, they having purchased their original shares in open market, and fully paid for the same on or about the 17th of February, 1874, and the new allotment of shares being made on 22d of May, 1874, which were subsequently surrendered and cancelled on November 6th, 1874, so that the said cause of action, if any ever existed, no longer survives said lapse of over six years since the close of said transaction.

2. The defendants further suggest and aver that the said plaintiff did not become a creditor of the said company after the date
54 of the new allotment of shares on May 22d, 1874, but before that date, to wit, in May, 1874, and that no credit was therefore given by plaintiff to the company on the faith of the said alleged subsequent new issue of shares, his debt having been contracted prior thereto, and the original shares being fully paid for by these defendants to the owners and vendors of the same, these defendants never having been subscribers to said stock, but merely purchasers thereof from the holders of said stock, to whom they fully paid therefor. Moreover, the debt due plaintiff was for instalments due on a third mortgage, held by him at the date of the original purchase, on the company's property, which the company assumed. Said plaintiff foreclosed said mortgage, and the said property and mortgage were purchased by one Holmes, of Salisbury, N. C., in 1875, who still holds the same, as defendants believe.

3. The number of original shares purchased and paid for by defendants was as follows:

Caroline A. Boggs	3 shares.
Emily Boggs	3 "
Virginia C. Boggs	3 "
Mrs. T. J. Cram	1 "

These defendants deny all fraud or illegality in the transaction, and as executrices of the said Mary Cram, deceased, they answer on information and belief as to facts concerning said decedent's purchase. The said defendants ceased to be owners or holders of said shares of stock on December 2d, 1876, when they disposed of the same.

4. As to the facts and reasons concerning the increase of the capital stock and the surrender of the said shares on June 3d, 1874, and the issuing therefor of forty shares of the increased stock, and the subsequent surrender on November 5th, 1874, of the new issue, and the return to them of their original ten shares, these defendants desire without repetition to adopt as their own and as true, so far as they know, the answers in reference thereto of the said corporation
55 defendants, the said T. J. Cram, and L. P. Smith, heretofore filed in this cause, and the facts therein set forth.

5. These defendants deny that they ever subscribed or agreed to pay for the said additional shares issued to them on May 22d, 1874, and which shares were surrendered to the company and cancelled on November 5th, 1874. Those additional shares had been issued pursuant to a new plan of organization, as substitutionary of the original shares, in the manner and for the purposes set forth in the answer filed by the said company defendants, and said shares were in no sense issued to be sold by the company to new subscribers, nor were any, in fact, so sold. The effect of said cancellation of said new issue of stock was to place the original shares in the position they occupied before said intended increase of stock as to number of shares and par value, while their relative value is reduced below their original interest, and no prejudice resulted to the company or its creditors.

6. These defendants insist further that the said plaintiff is barred by his laches and acquiescence for over six years past, and by not sooner filing his present amended bill against them, the said alleged non-paying stockholders of the increased capital; that during all of said time the plaintiff had ample knowledge of said attempted increase and the subsequent surrender and cancellation of said stock, and had then, as a prior and existing creditor, as complete a right of action as he now has, and should then, if ever, begun said suit, when all the parties and witnesses were alive and accessible, instead of delaying said claim unreasonably to this time without reason or excuse, to the prejudice of defendants, and they therefore submit that he, as a creditor with notice, has thus recognized and ratified the same, and is estopped.

7. That the charter of said company authorizes payment for stock to be made in personal property, and that as to creditors prior to said increase, of which plaintiff is one, defendants are advised
56 that it was competent for the company to agree that the new issue of stock should be full paid by the surrender to it of the ten old shares then held by defendants, in lieu of the forty new shares to be issued, which only represented the same or less value than the original shares.

All which matters and things are true, without this, that any other matter, cause, or thing in the said complainant's said bill of

complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver and maintain and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

VIRGINIA C. BOGGS,
CARRIE BOGGS,
For Themselves and as Executrices of Mary Cram, Dec'd.
EMILY BOGGS.

UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss:*

Virginia C. Boggs, Emily Boggs, and Carrie Boggs, in their own right, and the said V. C. Boggs and Carrie Boggs as executrices of the will of Mary Cram, deceased, being severally duly sworn or affirmed, say that the facts stated in the foregoing answer of their own knowledge are true, and those stated upon information or belief they believe to be true.

VIRGINIA C. BOGGS.
EMILY BOGGS.
CARRIE BOGGS.

Sworn or affirmed and subscribed to before me this 30th day of April, 1881.

[L. S.] JOS. I. FARLEY,
Notary Public.

57 (Endorsed:) 52. April sess., 1880. U. S. C. C. In equity. Coit *vs.* N. C. Gold Co. *et al.* Answers of Virginia C. Boggs, Emily Boggs, and Carrie Boggs, and also Mary Cram's executrices. Pierce Archer, solicitor for above def'ts. Filed April 30, 1881.

58 & 59 And on the day and year last aforesaid the defendant, John Jay Smith, by his solicitor, Pierce Archer, Esq., comes into our said court here and files his answer to the bill of complaint of William A. Coit in the words following, to wit:

In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

The answer of John Jay Smith to the bill of complaint of Wm. A. Coit.

This defendant, as to so much of the bill as he is advised it is necessary for him to answer, says:

1. That he is advised and insists that the proposed remedy sought by the plaintiff's bill is barred by the statute of limitations and by lapse of time before the bringing of said suit against him on the 11th

of March, 1881, he having purchased his original shares in open market, and fully paid for the same on or about the 17th of February, 1874, and the new allotment of shares being made on 22d of May, 1874, which were subsequently surrendered and cancelled on November 6th, 1874, so that the said cause of action, if any ever existed, no longer survives said lapse of over six years since the close of said transaction.

2. The defendant further suggests and avers that the said plaintiff did not become a creditor of the said company after the
60 date of the new allotment of shares, on May 22d, 1874, but before that date, to wit, in May, 1874, and that no credit was therefore given by plaintiff to the company on the faith of the said alleged subsequent new issue of shares, his debt having been contracted prior thereto, and the original shares being fully paid for by this defendant to the owners and vendors of the same, this defendant never having been a subscriber to said stock, but merely purchaser thereof from the holders of said stock, to whom he fully paid therefor. Moreover, the debt due plaintiff was for instalments due on a third mortgage, held by him at the date of the original purchase, on the company's property, which the company assumed. Said plaintiff foreclosed said mortgage, and the said property and mortgage were purchased by one Holmes, of Salisbury, N. C., in 1875, who still holds the same, as defendant believes.

3. The number of original shares purchased and paid for by defendant was ten (10) shares.

4. As to the facts and reasons concerning the increase of the capital stock and the surrender of the said ten (10) shares on June 3d, 1874, and the issuing therefor of forty shares of the increased stock, and the subsequent surrender on November 5th, 1874, of the new issue, and the return to him of his original ten shares, this defendant desires, without repetition, to adopt as his own and as true, so far as he knows, the answers in reference thereto of the said corporation defendants, the said Cram and Smith, heretofore filed in this case, and the facts therein set forth.

5. This defendant denies that he ever subscribed or agreed to pay for the said additional shares issued to him on May 22d, 1874, and which shares were surrendered to the company and cancelled on November 5th, 1874. Those additional shares had been issued pursuant to a new plan of organization, as substitutionary of the original shares, in the manner and for the purposes set forth in the
61 answer filed by the said company defendants, and said shares were, in no sense, issued to be sold by the company to new subscribers, nor were any, in fact, so sold. The effect of said cancellation of said new issue of stock was to place the original shares in the position they occupied before said intended increase of stock as to number of shares and par value, while their relative value is reduced below their original interest and no prejudice resulted to the company or its creditors.

6. This defendant insists further that the said plaintiff is barred by his laches and acquiescence for over six years past and by not sooner filing his present amended bill against them, the said alleged non-paying stockholders of the increased capital; that during all of said time the plaintiff had ample knowledge of said attempted increase and the subsequent surrender and cancellation of said stock, and had then, as a prior and existing creditor, as complete a right of action as he now has, and should then, if ever, begun said suit, when all the parties and witnesses were alive and accessible, instead of delaying said claim unreasonably to this time without reason or excuse, to the prejudice of defendant, and he therefore submits that he, as a creditor with notice, has thus recognized and ratified the same and is estopped.

7. That the charter of said company authorizes payment for stock to be made in personal property, and that as to creditors prior to said increase, of which plaintiff is one, defendant is advised that it was competent for the company to agree that the new issue of stock should be full paid by the surrender to it of the ten old shares then held by defendant in lieu of the forty new shares to be issued, which only represented the same or less value than the original shares.

All which matters and things are true without this, that any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to
62 make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver and maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN JAY SMITH.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *ss:*

John Jay Smith, being duly sworn or affirmed, says that the facts stated in the foregoing answer of his own knowledge are true, and those stated upon information or belief he believes to be true.

JOHN JAY SMITH.

Sworn or affirmed and subscribed to before me this 29th day of April, 1881.

[L. S.] CHARLES H. WEISS,
Notary Public.

(Endorsed:) 52. April sess., 1880. U. S. C. C. In equity. Coit *vs.* N. C. Gold Co. Answer of John Jay Smith. Filed April 30, 1881. Pierce Archer, solicitor for above def't.

63 And afterwards the defendants, A. G. Elliot, Jacob D. Mitchell, Thomas H. Neilson, Mary A. Neilson, Allen Mid-

dleton, and Ferdinand Allen, come into our said court here and file their joint and several answers in the words following, to wit:

In the Circuit Court of the United States, Eastern District of Pennsylvania. In Equity.

Between—

WILLIAM A. COIT, a Citizen of the State of New York, Plaintiff, *and* THE NORTH CAROLINA GOLD AMALGAMATING Company and Thomas J. Cram and Others, Defendants.	April Sessions, 1881. No. 52.

The joint and several answers of A. G. Elliot and Joseph B. Mitchell, executors of Joseph G. Mitchell, deceased; Thomas H. Neilson, Allen Middleton, junior, Ferdinand Allen, John R. Hall, Mary A. Neilson, and Jacob D. Mitchell to the bill of complaint of William A. Coit.

These defendants, as to so much of the bill as they are advised it is necessary for them to answer, say:

They are advised and insist that the proposed remedy sought by the bill is barred by the statute of limitation and lapse of time.

64 The transaction under which the stockholders agreed to take stock at the organization of the corporation was closed on the thirteenth day of February, 1874, by their acceptance of the shares and the acceptance of the price by the corporation. The transaction under which the additional shares were taken was completely closed on the twenty-second day of May, 1874; and, moreover, the said additional shares were actually surrendered and accepted by the company and canceled on the fifth of November, 1874.

The amendment to said bill by which the above defendants were made parties was made January 24th, 1881, as appears by the bill, but by the records in the case was made February fifth, 1881, and subpœna on said amendment issued March third, 1881.

And these defendants are advised that the cause of action, if any ever existed in the corporation against its stockholders for alleged subscriptions to the shares, occurred more than six years before the time at which the commencement of the suit is to be computed, and hence the claim is barred by the statute.

And these defendants, not waiving this defence, further answering, say:

Some time in 1874 a number of persons were already interested in a gold-ore-reduction operation in Virginia and North Carolina, being owners of a patented process known as the "Crosby process" for extracting gold from ore, which had proved extremely profitable; and they were owners of a mill and had made a contract for the supply of the ore at a price which rendered the working extremely profitable. Some of these defendants, to wit, Thomas H. Neilson, Joseph G. Mitchell, deceased, and Allen Middleton, junior,

had been induced to advance large sums to the parties concerned to aid in the enterprise, and it was proposed to organize a corporation to take the place of the parties concerned by capitalizing the
65 assets and liabilities and issuing stock therefor in the proportion of the respective interests of the parties.

Some of these defendants, to wit, Thomas H. Neilson, Joseph G. Mitchell, deceased, and Allen Middleton, junior, being creditors for advances to the parties interested, were so well convinced of the desirableness of the arrangement that they consented to convert their claims for money lent into shares, the property subject to the debts being valued at $100,000.

This arrangement being agreed upon, an application was made to the State in which the operations were to be carried on for a special charter to enable them to carry out their undertaking and to exempt them from personal liability in so doing.

The charter was granted January thirtieth, 1874, and accepted, and in pursuance of its provisions the parties organized a company upon these terms, viz:

The capital was fixed at $100,000 and consisted of the assets of the adventurers in the scheme, the shares paid by the contribution thereof being issued to the parties in the proportion of their interests, the shares issued to some of these defendants being to Thomas H. Neilson, twenty shares; Allen Middleton, junior, sixty shares, and to Joseph G. Mitchell, one hundred shares, which were to be, and were, accepted as payment of the debts due them respectively by the company of adventurers, and for which they held an agreement to give them a proportionate interest in the property of the adventurers embarked in the enterprise valued at $137,000.

The said defendants, Neilson, Mitchell, and Middleton, deny all fraud or illegality in the transaction. They were advised by counsel, and believed, the scheme was legal. They knew that no fraud was intended, as they paid for the shares in the manner stated by extinguishing debts that were believed to be well secured.

The defendants, Jacob D. Mitchell, Ferdinand Allen, and John R. Hall, subsequent to the issuing of the original one
66 thousand shares in February, 1874, bought in the market the following shares, viz: Jacob D. Mitchell and John R. Hall, each twenty shares; Ferdinand Allen, twenty-five shares, and Mary A. Neilson, fifteen shares, respectively, receiving the co-defendants' certificates for the same.

After the working of, the reduction of, and the extraction of the gold from the ore began it was ascertained that the contractor for delivering ore could not comply with his contract for want of adequate capital.

There was no other reason for the want of success. It had been ascertained that the ore possessed the requisite richness; that the process enabled the company to extract the gold at a very large profit, and to do this on a scale that made the returns a profitable business on the capital.

To meet this contingency it was proposed that the contractor for the ore should abandon his contract and contribute the land, with

all the mines and mining improvements thereon, as capital; that the capital stock should be increased to $1,000,000, a portion of which should be issued to the owners of the joint property, the stockholders surrendering their original shares, and that the remainder of the capital stock should be sold for cash.

The scheme was carried out as agreed upon. The land and improvement owner received two thousand shares. The old stockholders received four thousand shares, each getting four new for one old surrendered, and the rest (four thousand) was retained for sale.

The agent appointed to negotiate the sale became sick, and was thus prevented for a time from acting, and during this a third party appeared and claimed the land, with the mines and improvements thereon, and brought suit for it.

Up to that time the business prospects of the company were so good that some of these defendants, to wit, Jos. G. Mitchell, Allen Middleton, and Thomas H. Neilson, advanced large sums to it by way of loan, and three of them, to wit, Jos. G. Mitchell, Jacob
67 D. Mitchell, and Thomas H. Neilson, also entered into the employ of the company and devoted much of their time to them, trusting to their capacity to pay.

The suit for the title to the land put an end to the expected raising cash capital to work the mines in the lands by sale of shares.

Then, to harmonize interests, a new scheme was adopted and carried out in part. The adverse claimants for the land agreed that if the capital should remain fixed at $1,000,000, and the certificates outstanding should be surrendered and new certificates accepted for the same number of shares as had been originally issued and paid for, they on their part would contribute their interest in the land and take shares therefor, and also, in exchange for shares at par, furnish capital to work the mines and pay all the debts of the company.

The company agreed to this, and these defendants accordingly surrendered the certificates they had received and accepted others in their place, as follows: Jos. G. Mitchell received forty shares (he had sold sixty shares of his stock before the capital was increased; hence, received of the increased stock only one hundred and sixty shares); Allen Middleton, Jr., received sixty shares; Thomas H. Neilson; John R. Hall, and Jacob D. Mitchell received twenty shares each; Ferdinand Allen, twenty-five shares, and Mary A. Neilson seventeen and a half shares (Mary A. Neilson bought ten shares after the capital was increased). The above defendants still hold the said shares, with the exception of John R. Hall, who disposed of his stock in January, 1875, and now has no interest in the said company.

But the claimants of the land utterly failed to carry out their part of the contract. The consequence was that a large debt secured by mortgage on the property, subject to which the company took it, became due, and the property was sold under it by the sheriff.

These defendants deny that they owe any money for the stock they have received.

68 As to the first issue, they have paid for it as agreed upon.

As to the second, it was an exchange to meet the views of the company and of a new contributor.

And the increased number of shares received by them of this second issue were all in good faith surrendered to the company at its request and cancelled in the course of an arrangement *bona fide* expected to settle the title and make the business profitable.

They have never entered into any contracts which in form and substance have not been complied with, nor have they ever entered in any contract not authorized to be so made by law.

They further say that some of them, to wit, Joseph G. Mitchell and Jacob D. Mitchell, were arrested, together with Cram and Smith, defendants, at the instance of E. F. Hoffman, attorney for plaintiff, on a criminal charge growing out of transactions of codefendant with Potter and Hoffman, former plaintiffs, and were discharged on *habeas corpus* by his honor Judge Ludlow; that said Hoffman, attorney, subsequently sued said Cram and Smith, defendants in the present case, in the courts of Pennsylvania for this very cause of action, and in a cause in which the very same question was raised, viz: Were they indebted to the company for the alleged subscriptions or by reason of having taken this stock? The cause was tried on the merits and there was no evidence bearing on the case not produced, and there were no technical questions raised which prevented the cause being tried on the merits. And it was then decided that the defendant Cram was not indebted to the company because of his acts in agreeing to take and taking the stock of the company. The case against the defendant Smith was identical in fact, and was never pressed for trial after this decision.

They further aver that some of them are creditors, Joseph G. Mitchell, Allen Middleton, Jr., Thomas H. Neilson, J. D. Mitchell,

69 and Wm. D. Buck, of the corporation, to wit: There is due Wm. D. Buck $94.76, and to Allen Middleton, Jr., $1,138.90, and there is due Joseph G. Mitchell $9,108.14, Jacob D. Mitchell $922.74, and to Thomas H. Neilson $3,480.14, respectively, for money lent and services rendered to said company defendant. It is true that the company has been requested to permit these defendants to be sued for these alleged subscriptions, as stated in their answer, and that such consent has not been given, because the subscriptions that were made were paid as it was agreed they should be paid when the subscription was made. And as to the increased capital, it never was subscribed or agreed to be taken otherwise than in exchange for old shares surrendered as above stated.

The company therefore declined permitting the proposed suits to be instituted, and the result of the suit above referred to proves that suits brought in the name of the company could not have succeeded if they had been authorized; and the company believed it could not honestly sue and attempt to compel parties to pay what they had not agreed to pay after the company had received what had been agreed to be received for the stock.

Respondent, Jacob D. Mitchell, says that Joseph B. Mitchell, deceased, was his father, and that he is unacquainted with Ann

Mitchell, sued as executrix of Joseph B. Mitchell, deceased, and that there is no such person executrix of his father's estate.

These defendants further say that neither they nor the company defendant are equitably indebted to the plaintiff in any amount whatever, for the following reasons:

The plaintiffs' claim, to wit, $5,489.82, is the principal interest and costs on two drafts, one for $3,000, dated August 15th, 1874, drawn by plaintiff to his own order and accepted by the company defendant, and the other for $1,000, dated June first, 1874, and drawn by one Amos Howes in favor of plaintiff and accepted by company defendant. The said Amos Howes claimed to be the owner of the gold mine at Gold Hill, North Carolina, on which the company defendant had erected its mill, upon a lease from said
70 Howes, and an agreement on his part to furnish the said company defendant with ore for reduction, etc. Defendants Cram, Smith, Hulme, Joseph G. Mitchell, and B. A. Mitchell had advanced said Howes some $5,000.00, to be used in taking out the said ore for the said mill. Said Howes misapplied the money, and was unable to carry out his contract to furnish the said ore, as agreed on, and in consequence thereof the said company defendant were obliged to enter into the arrangement set forth above to increase its capital stock and take the property. The company defendant agreed to increase its capital to 10,000 shares, and to give two thousand shares to said Howes, to assume some $35,000 of his debts, and take the mine, subject to several mortgages, aggregating some $50,000.00. One of the said mortgages, for some $25,000, was held by the present plaintiff, William A. Coit, and when the deed to property was made by said Howes to the company defendant the said Coit released his said mortgage and took a mortgage from company defendant for a like amount on its property.

The $3,000 draft above mentioned was accepted by company defendant at the request of said Coit to pay the first instalments on his, Coit's, said mortgage, and the $1,000 draft above mentioned was accepted by company defendant to pay $1,000 due by said Howes to said Coit.

Some months after the maturity of the said draft for $3,000, the said Coit sold his said mortgage to one Mauney, of North Carolina, who foreclosed the same and bought in the mine, mill, etc., of the company defendant; and these defendants are informed and believe, and so assert, that at the time said Howes sold the said mine, etc., to company defendant, and asserted he had a perfect title thereto (when, in fact, he had not, and it was through the said defect of title that the company defendant became embarrassed, as it was unable to dispose of its stock with a cloud on said title), the said plaintiff, Coit, was his partner (and has so been found by a jury
71 trial on that point in North Carolina, where he was sued with said Howes for debts contracted by said Howes about the said property while said Howes was working it). Defendants therefore say and charge that said Coit was a party to said Howes' fraud on company defendant, being cognizant of the purchases, etc., at the time it took place. Defendants further say that said Coit was

bound in equity to deliver up the said $3,000 draft to company defendant after he sold the said mortgage. The whole of plaintiff's claim arises from transactions between company defendant and said Howes in the purchase of the said property, and in equity said Coit cannot take advantage of the fraud of his partner, said Howes.

All which matters and things are true, without this, that any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver and maintain and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

A. G. Elliott and Joseph B. Mitchell, executors of Joseph G. Mitchell, deceased; Thomas H. Neilson, Allen Middleton, Jr., Ferdinand Allen, John R. Hall, Mary A. Neilson, and Jacob D. Mitchell, being severally duly sworn or affirmed, say that the facts stated in the foregoing answer of their own knowledge are true, and those stated upon information or belief they believe to be true.

A. G. ELLIOTT, *Ex'r.*

Sworn or affirmed and subscribed before me this 29 day of April, 1881.

[SEAL.] EZRA LUKINS,
Magistrate.

J. D. MITCHELL.

Sworn or affirmed and subscribed before me this 29th day of April, 1881.

[SEAL.] JAMES P. PETIT.
Notary Public.

THOMAS H. NEILSON.
MARY A. NEILSON.

Sworn or affirmed and subscribed before me this 30th day of April, 1881.

[SEAL.] JOHN M. RIDINGS,
Notary Public.

ALLEN MIDDLETON.

Affirmed and subscribed before me this 5th day of May, 1881.

[SEAL.] EZRA LUKINS,
Magistrate.

FERDINAND ALLEN.

Sworn or affirmed and subscribed before me this 6th day of May, 1881.

[SEAL.] JAMES P. PETIT,
Notary Public.

72 (Endorsed:) No. 52. April sessions, 1881. In the circuit court of the United States, eastern dist. of Penna. In equity. Between

Wm. A. Coit, plaintiff, and The North Carolina Gold Amalgamating Company and Thomas J. Cram and others, defendants. Joint and several answer of A. G. Elliot and Joseph B. Mitchell, executors of Joseph G. Mitchell, deceased; Thomas H. Neilson, Allen Middleton, Jr., Ferdinand Allen, John R. Hall, Mary A. Neilson, and Jacob G. Mitchell. Thomas H. Neilson, Wm. A. Husband, solicitors for above def'ts.

73 And afterwards, to wit, on the 2nd day of May, A. D. 1881, the defendant, F. Mortimer Lewis, executor of John Hulme, dec'd, by his solicitor, Samuel Dickson, Esq., comes into our said court here and files his answer to the bill of complaint of William A. Coit in the following words, to wit:

In the Circuit Court of the United States, Eastern District of Pennsylvania. In Equity.

WILLIAM A. COIT *vs.* THE NORTH CAROLINA AMALGAMATING COMPANY *et al.*	April Sessions, 1880. No. 52.

The answer of F. Mortimer Lewis, executor of John Hulme, deceased, to the bill of complaint of William A. Coit.

This defendant, reserving all exceptions, for answer to so much of the bill as he is advised it is necessary for him to answer, says:

John Hulme died on the twenty-second day of April, A. D. 1874. His last will and two codicils thereto were proved on April 30th, 1874, and letters testamentary issued the same day to this defendant and John C. Bullitt, the executors by said will appointed.

This defendant found among the assets of his testator thirty shares of the capital stock of the North Carolina Gold Amalgamating Company.

As to all matters and things alleged in the first and second paragraphs of said bill of complaint as occurring prior to the said thirtieth day of April, 1874, this defendant has no knowledge, and asks that, if deemed material, they may be proven.

74 As to the allegations contained in the third paragraph of said bill this defendant says that he is informed and believes the surrender of the old shares of stock and the issue of the new shares at the rate of four for one was made *bona fide* in pursuance of a plan to meet the requirements of the company, and the views of a new contributor, as is more particularly set forth in the answer of the North Carolina Gold Amalgamating Company in this case filed; that on or about the twentieth day of June, A. D. 1874, he surrendered the thirty shares of stock held by him as executor, and received in exchange one hundred and twenty shares of the new stock, and that afterwards, to wit, on the twenty-fifth day of November, A. D. 1874, he, in pursuance of a request made by said company, surrendered the said one hundred and twenty shares for the purpose of having them canceled and of having the original thirty shares reissued to him.

This defendant further says that the estate of John Hulme, deceased, is a creditor of the North Carolina Gold Amalgamating Company for money advanced to a large sum, to wit, to the amount of $1,000, and for a further answer he says that he is advised and insists that the proposed remedy sought by the bill is barred by the statute of limitations and lapse of time.

The transaction under which John Hulme, deceased, took the said thirty shares of stock was closed prior to the thirtieth day of April, 1874. The transaction under which the additional shares were taken was completely closed on the twentieth day of June, 1874, and, moreover, the said additional shares were actually surrendered and accepted by the company and canceled on the 25th of November, 1874.

The bill in this case, as to this defendant, was filed on February 5th, 1881.

75 And this defendant is advised that the cause of action, if any ever existed in the corporation against John Hulme for alleged subscriptions to the shares, occurred more than six years before the time at which the commencement of the suit is to be computed, and hence the claim is barred by the statute.

All of which matters and things are true, without this, that any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver and maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

F. MORTIMER LEWIS.

SAMUEL DICKSON,
Of Counsel with Def't, F. Mortimer Lewis.

F. M. Lewis, being duly affirmed, says that the facts stated in the foregoing answer of his own knowledge are true, and those stated upon information or belief he believes to be true.

F. MORTIMER LEWIS.

Affirmed and subscribed before me this second day of May, 1881.
[SEAL.] ALEX. RAMSEY,
Notary Public.

(Endorsed:) No. 52. April sessions, 1880. United States circuit court. In equity. William A. Coit *vs.* The North Carolina Amalgamating Co. Answer of F. M. Lewis, executor. Filed May 2d, 1881. Dickson.

76 And afterwards, to wit, on the 2nd day of May, A. D. 1881, Emmons T. Mockridge, one of the defendants, by his solicitor, Samuel Dickson, Esq., comes into our said court here and files his

plea to the bill of complaint of the complainant, which, being read, is as follows, to wit:

U. S. C. C.

WILLIAM A. COIT
vs.
EMMONS T. MOCKRIDGE *et al.* } April Sess., 1880. No. 52.

The plea of Emmons T. Mockridge, defendant, to the bill of complaint of William A. Coit.

This defendant, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of the said bill saith that on the seventeenth day of March, A. D. 1879, there was granted to him by the district court of the United States for the eastern district of Pennsylvania, in bankruptcy, a full and
77 absolute discharge from all debts and claims which were provable against his estate, and which existed August 29th, 1878, and that the claims of the said plaintiff, if existing and provable at all, were then due and provable against said estate, and that such discharge is a full and complete bar to the claim of the said plaintiff. Said discharge is in the words and figures following, viz:

Certificate of Final Discharge of Bankrupt.

In the District Court of the United States for the Eastern District of Pennsylvania. In Bankruptcy. No. 2299.

In the Matter of EMMONS T. MOCKRILGE, Bankrupt.

Whereas Emmons T. Mockridge, of Plymouth, in the county of Montgomery and State of Pennsylvania, has been duly adjudged a bankrupt under the provisions of the several acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of the law in that behalf: It is therefore ordered by the court that said Emmons T. Mockridge be forever discharged from all debts and claims which by said acts are made provable
78 against his estate, and which existed on the twenty-ninth day of August, A. D. one thousand eight hundred and seventy-eight, on which day the petition for adjudication was filed by him, excepting such debts, if any, as are by law excepted from the operation of a discharge in bankruptcy.

Given under my hand and the seal of said district court, at Philadelphia, in said district, this seventeenth day of March, A. D. one thousand eight hundred and seventy-nine.

{ Seal of the District Court of the United States for the Eastern District of Pennsylvania. }

WM. BUTLER,
District Judge.

All which matters and things this defendant doth aver to be true, and he pleads the said discharge to the said plaintiff's bill, and

prays the judgment of this honorable court whether he should be compelled to make any other or further answer to the said bill, and prays to be hence dismissed with his costs and charges in that behalf most wrongfully sustained.

SAM'L DICKSON,
Att'y for Emmons T. Mockridge, One of the Above Defendants.

79 (Endorsed:) No. 52. April sess., 1880. U. S. C. C. Coit *vs.* Mockridge *et al.* Plea of Emmons T. Mockridge. Filed May 2, 1881. Dickson.

80 And afterwards, to wit, on the 5th day of May, A. D. 1881, the defendants, B. K. Jamison and Company, by their solicitor, George Bull, Esq., come into our said court here and file their answer to the bill of complaint of William A. Coit in the words following, to wit:

Separate Answer of B. K. Jamison & Co.

In the Circuit Court of the United States, Third Circuit. In Equity

WILLIAM A. COIT *vs.* THE NORTH CAROLINA GOLD AMALGAMATING COMPANY and Others.	No. 52. April sessions, 1880.

1. In answer to the matters set forth in the bill included in the several paragraphs thereof, numbered from No. 1 to No. 7, inclusive, these defendants say they have no knowledge whatever thereof. They had no part or interest in the matters therein recited, and pray that the plaintiff may be required to make proof thereof.

And, further answering, they say:

2. That they were never interested in any manner in the copartnership set up in the bill, and were in no manner or form parties thereto.

3. That these defendants were not parties to nor in any manner interested in the creation or affairs of the "North Carolina Gold Amalgamating Company," the corporation described in the bill.

81 4. These defendants never owned any stock in said company. They believe that there were and are now certain shares of said corporation standing in their name on the books of the said company, but the said shares were not the property of defendants, but belonged to one George J. Richardson, for whose account and benefit defendants so held them.

Wherefore these defendants pray to be hence dismissed, with their proper costs and charges in this behalf most unjustly incurred.

B. K. JAMISON & CO.

GEORGE BULL,
Solicitor for said Defendants.

PHALADELPHIA, *ss:*

I, B. K. Jamison, being duly sworn, depose and say that I am a member of the firm of B. K. Jamison & Co.; that the foregoing answer is true, so far as stated on my own knowledge, and I believe it to be true so far as stated upon information.

B. K. JAMISON.

Sworn and subscribed before me this 3rd day of May, 1881.
[SEAL.] HENRY POLSZ,
Notary Public.

(Endorsed:) 52. April sessions, 1880. U. S. circuit court. Coit *vs.* Amalgamating Company and others. Separate answer of B. K. Jamison & Co. Geo. Bull. Filed May 4, 1881.

82 And afterwards, to wit, on the 5th day of May, A. D. 1881, the defendant, M. H. Cobb, by his solicitor, W. Henry Smith, Esq., comes into our said court here and files his answer to the bill of complaint of William A. Coit in the words following, to wit:

Answer of M. H. Cobb.

U. S. C. C., E. D. of Pa. Equity.

COIT
vs.
N. C. GOLD AM'L. CO. } April Sess., 1881. 52.

M. H. Cobb, served with writ of subpœna in above-entitled case, answering separately for himself, says:

I. That the only interest he ever had in the N. C. Gold Amalgamating Company, defendant, resulted from his purchase from one J. D. Mitchell of three shares full-paid capital stock of the par value of one hundred ($100) dollars each, for which he paid said Mitchell, who claimed to own said stock absolutely, one hundred and ten ($110) dollars per share, or three hundred and thirty dollars in all. Subsequently, in June, 1874, this defendant returned or sent said capital stock directly to the office of the company, in pursuance of verbal declarations about that time made to said company that he, the defendant, regarded it as worthless—that they "could do with it as they pleased." The defendant did not at the time receive or agree to receive any other stock on account of such surrender, nor did [he] then or at any other time buy or receive from said company any other stock [or] agree or in
83 any manner promise, directly or indirectly, to pay for any other stock; that the defendant has not now that or any stock in said company defendant. After the defendant so gave up his stock to said company (prompted at the time, perhaps, by some request) he may have had sent to him, voluntarily by the company, other stock, or a receipt for other stock. Whatever was so sent to defendant was by him sent back to the company. All the stock or right to stock in said company which defendant possesses is a re-

ceipt promising in substance to deliver up to him his three shares of stock, which bears date November 27, 1874. The defendant did not require this, and has regarded the company and its stock of so little consequence that he has never asked for the stock which this receipt calls for, though he paid for the original $110 for a share of $100 in open market as aforesaid.

II. The defendant was never an officer, director, agent, or other employee, nor had nothing to do with its business affairs or its stock schemes or transactions, and has no actual knowledge as to what they were, nor has he access or means of access to its books or records.

III. That defendant was mainly induced to purchase and pay for said stock to said Mitchell as a friendly and kindly act to said Mitchell, whom he supposed would be benefited personally, as he claimed to be, and defendant thinks he was the owner thereof in his individual right, being assured by said Mitchell that the stockholders would not be liable for any loss or damage or responsibility beyond the assets of the said company.

IV. The defendant has no knowledge of any fraud being practiced by the company against the plaintiff or against any one, nor has he knowledge of his debt, nor such positive information as will justify an oath as to how other stockholders paid for their stock.

V. This defendant is advised and believes that the plaintiff has no legal or equitable claim against him, because—

(1.) This defendant bought his stock in open market and paid a premium for it, in addition to its par value.

84 (2.) Because, by the law of its charter, it was provided that "the stockholders of this company shall not be liable for any loss or damage or responsibility beyond the assets of the company."

(3.) Because if there was any wrongful or illegal act on the part of any of the officers (which the defendant denies) this defendant was not a party to or cognizant of it, and received no benefit or advantage, directly or indirectly, with or without knowledge on account thereby.

(4.) Because if by any construction of law this defendant would be or would have been in any manner liable for the act of others over which he had no control, and of which he, in fact, had no knowledge, such act, as set forth in plaintiff's bill, occurred more than six years prior to the time when this defendant was made a party in this case.

VI. The defendant has set forth substantially all the knowledge which he possesses regarding the matter complained of in the bill of complaint deemed material under the advice of counsel; beyond this he has no knowledge of the allegations set forth in plaintiff's bill of complaint in sections 1, 2, 3, 4, 5, 6, and 7 thereof. He therefore prays that said plaintiff shall be required to prove the allegations in his said bill as fully as if he had denied them each and all.

VII. The defendants ask leave to take advantage of the manifest errors and imperfections in said bill of complaint as fully as though he had demurred to the same.

M. H. COBB.

COUNTY OF PHILADELPHIA, *ss:*

Personally appeared before me, M. H. Cobb, who also being duly sworn, says that all of the foregoing facts stated as of his own knowledge are true; those on information and belief he believes to be true as by him stated.

M. H. COBB.

Sworn to & subscribed before me this 5th day of May, A. D. 1881.

SAMUEL BELL,
U. S. Commissioner.

(Endorsed:) U. S. C. C., E. D. of Pa. 52. Ap'l sess., 1880. Coit *vs.* Gold Co. *et al.* Separate answer of M. H. Cobb. Filed May 5, 1881. W. Henry Smith.

85 *Separate Answer of William B. Buck, a Defendant.*

In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

WILLIAM A. COIT, Plaintiff,
vs.
NORTH CAROLINA GOLD AMALGAMATING COMPANY *et al.*, Defendants. } No. 52. April Sess., 1880.

This defendant, not waiving any objection in law, by reason of the defects and errors in said bill contained, for answer thereto, says:

First. This defendant, in the year 1874, subsequently to the month of May, and after the stock of the North Carolina Gold Amalgamating Company had been increased, as averred by complainant in paragraph 3 of his bill of complaint, purchased from Joseph G. Mitchell eighty shares of the said capital stock of said North Carolina Gold Amalgamating Company. In November, 1874, at the request of the officers of said company, he returned to them said stock, and received from them their receipts, copies of which are hereto annexed, marked Exhibit A.

That he has never received any stock or certificates of said
86 corporation, other than those described, from it, nor from any one else, and he has never promised or agreed in any manner to purchase any stock of the company other than that mentioned by him as having been purchased of Joseph G. Mitchell.

Said defendant has now no certificate of stock of said company in his possession, neither has he ever had any, except the shares purchased as aforesaid from Joseph G. Mitchell and returned to the company; said receipts he has had since their issue, but he, regarding said stock as valueless, has never requested of the company the issue of the shares therein referred to.

Second. The defendant further says that his purchase of the stock of the said company was made in the year 1874, and that he surrendered said stock and received receipts, copies of which are annexed to his answer, November 20, 1874, and that if the said corporation

ever had any right of action against him for the value of any of the stock mentioned in said receipts, or because of his purchase of the same, it occurred more than six years prior to this suit against said defendant, and is now barred by the statute of limitations of the Commonwealth of Pennsylvania.

All of which matters and things this defendant is ready and willing to aver and maintain and prove as this honorable court shall direct, and humbly pray- to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(S'd) WILLIAM B. BUCK.

87 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Pennsylvania, }

William B. Buck, being duly sworn, says that the facts set forth in the foregoing answer of his own knowledge are true, and those stated upon information and belief he believes to be true.

(S'd) WILLIAM B. BUCK.

Sworn & subscribed to before me this second day of October, 1882.

[SEAL.] (S'd) RANDAL MORGAN,
Notary Public.

88 EXHIBIT A.

No. 42. Office of the North Carolina Gold Amalgomating Co., N. E. Cor. 3rd & Chestnut streets. Room- 7 and 8.

PHILADELPHIA, *November 20th*, 1874.

Received of William B. Buck certificate No. 191, for sixteen shares of stock of the North Carolina Gold Amalgomating Company, the same being returned according to a resolution passed at stockholders' meeting November 5th, 1874, and for which certificate a new certificate will be issued at the rate of one share for every four thus returned; and in case of fractional amount of a share, scrip of the company will be issued for such amount.

[Seal of N. C. G. A. Co.]

(S'd) J. G. MITCHELL, *President.*

Attest: (S'd) WM. F. MITCHELL, *Secretary.*

No. 44. Office of the North Carolina Gold Amalgomating Co., N. E. Cor. of 3rd & Chestnut streets. Room- 7 and 8.

PHILADELPHIA, *November 20th*, 1874.

Received of William B. Buck certificate No. 172, for ten shares of stock of the North Carolina Gold Amalgomating Company, the same being returned according to a resolution passed at stockholders' meeting November 5th, 1874, and for which certificate a new certificate will be issued at the rate of one share for every four thus returned; and in case of fractional amount of a share, scrip of the company will be issued for such amount.

[Seal of N. C. G. A. Co.]

(S'd) J. G. MITCHELL, *President.*

Attest: (S'd) WM. F. MITCHELL, *Secretary.*

89 No. 45. Office of the North Carolina Gold Amalgomating Co., N. E. Cor. of 3rd & Chestnut streets. Room- 7 & 8.

PHILADELPHIA, *November 20th*, 1874.

Received of William B. Buck certificate No. 200, for fifty-three shares of stock of the North Carolina Gold Amalgomating Company, the same being returned according to a resolution passed at stockholders' meeting November 5th, 1874, and for which certificate a new certificate will be issued at the rate of one share for every four thus returned; and in case of fractional amount of a share, scrip of the company will be issued for such amount.

[Seal of the N. C. G. A. Co.]

(S'd) J. G. MITCHELL, *President.*

Attest: (S'd) WM. F. MITCHELL, *Secretary.*

No. 46. Office of the North Carolina Gold Amalgomating Co., N. E. Cor. of 3rd & Chestnut streets. Room- 7 & 8.

PHILADELPHIA, *November 20th*, 1874.

Received of William B. Buck certificate No. 203, for one shares of stock of the North Carolina Gold Amalgomating Company, the same being returned according to a resolution passed at stockholders' meeting November 5th, 1874, and for which certificate a new certificate will be issued at the rate of one share for every four thus returned; and in case of fractional amount of a share, scrip of the company will be issued for such amount.

[Seal of the N C. G. A. Co.]

(S'd) J. G. MITCHELL, *President.*

Attest: (S'd) WM. F. MITCHELL, *Secretary.*

[Endorsed:] United States circuit court, April sess., 1880. No. 52. William A. Coit *vs.* North Carolina Gold Amalgomating Co. *et al.* Separate answer of William B. Buck, a defendant. Morgan & Lewis.

90 And afterwards, to wit, on the 7th day of May, A. D. 1881, the complainant, by his solicitors, comes into our said court here and files his replication to the answers of the defendants in the following words, to wit:

U. S. C. C. In Equity.

COIT *vs.* N. C. G. A. Co. *et al.* } April Sess., 1880. No. 52.

The plaintiff joins issue on the matters alleged in the answers of The North Carolina Gold Amalgamating Co., Lloyd P. Smith, Thomas J. Cram, Henry H. Barton, Virginia C. Boggs, Emily Boggs, and Carrie Boggs; also V. C. Boggs and Carrie Boggs, executrices of Mary Cram, dec'd; John Jay Smith, Thomas H. Neilson, Jacob D. Mitchell, A. G. Elliott, executor of Joseph G. Mitchell, dec'd; Mary A. Neilson, M. H. Cobb, F. M. Lewis, executor of John Hulme, dec'd; B. K. Jamison and Company.

And the plaintiff also joins issue in the matters alleged in the plea of Emmons T. Mockridge.

91 (Endorsed:) U. S. circuit court. April session, 1880. No. 52. Coit *vs.* Gold Co. *et al.* Replication of plaintiff. Filed May 7, 1881. E. F. Hoffman, *pro* pl'ff.

92 And afterwards, to wit, on the 9th day of May, A. D. 1881, the complainant, by his solicitors, comes into our said court here and files his replication to the answers of Allen Middleton and Ferdinand Allen in the words following, to wit:

U. S. Circuit Court. In Equity.

COIT
vs.
GOLD CO. *et at.* } April Session, 1880. No. 52.

The plaintiff joins issue in the matters alleged in the answers of Allen Middleton and Ferdinand Allen.

(Endorsed:) U. S. circuit court. In equity. April session, 1880. No. 52. Plaintiff's replication to answers of Allen Middleton and Ferdinand Allen. E. F. Hoffman, att'y *pro* pl'ff. Filed May 9, 1881.

93 And afterwards, to wit, on the 17th day of May, A. D. 1881, the court made the following order, to wit:

C. C. U. S.

COIT
vs.
THE GOLD COMPANY } Ap'l Sess., 1880. No. 52.

And now, to wit, this 17th day of May, A. D. 1881, on motion of the plaintiff's counsel, the defendant's counsel consenting, William Carter, Esq., is appointed examiner to take testimony.

(Endorsed:) No. 52. April sess., 1880. C. C. U. S., E. D. of Pa. Coit *vs.* North Carolina Gold Amalgamating Co. *et al.* Order appointing examiner. Entered and filed May 17, 1881.

94 And afterwards, to wit, on the 8th day of May, A. D. 1882, the examiner files his report, which is in the words following, to wit:

Circuit Court United States.

COIT
vs.
NORTH CAROLINA GOLD AMALGAMATING COMPANY. } April Sessions, 1880. No. 527.

Meeting to take plaintiff's testimony, held at office of the examiner, 416 Walnut street, July 7, 1881, at a quarter past eleven o'clock.

Present: Messrs. C. Hart and E. F. Hoffman, for the plaintiff; Messrs. Husband, representing Mary A. Neilson, A. G. Elliot, Joseph

B. Mitchell, executors of the estate of Joseph G. Mitchell, John R. Hall, Allen Middleton, Jacob G. Mitchell, and Ferdinand Allen; W. C. Bullitt, for F. Mortimer Lewis, executor of the estate of John Hulme, deceased, Pierce Archer; A. B. Roney, representing R. C. McMurtrie, counsel for the company, defendant, and T. J. Cram.

All of the counsel known to the examiner in the above case were duly notified of this meeting.

Mr. Husband desires to have put on the examiner's notes that the parties for whom he appears have associated with him in this case, as junior counsel, Mr. Thomas H. Neilson, whose appearance is on the record before Mr. Husbands, and who has received no notice of this meeting, and who is familiar with the details of the case; that the notice to Mr. Husband was not received until Tuesday
95 morning, in consequence of the 4th of July and Sunday intervening, and that he is therefore unprepared to go on with the case at present, and asks the counsel for the plaintiff for indulgence.

Counsel for plaintiff request the examiner to state whether notice was given by him to Mr. Thomas H. Neilson. The examiner answers that he sent notice by mail to Mr. Neilson, as well as to the other counsel, and at the same time.

Counsel for complainant say that inasmuch as a meeting has been called for this day and witnesses living away from the city have been summoned to appear, they do not see what else can be done than that the meeting be proceeded with as far as may reasonably be done this day.

Mr. Roney states for Mr. Archer that Mr. Archer had no knowledge that the meeting would be for any other purpose than for the identification of papers, and that owing to the sickness of his child he would not have been able to stay for the examination of witnesses.

Mr. Roney states that his client, Mr. Cram, one of the defendants, is present in opposition to the advice of his physician, and is unable to go on with the testimony.

Mr. Husband asks the counsel for the plaintiff that this meeting shall go over until the same time in September, because under the rules of equity practice in the State courts, which is the practice to a great extent under his knowledge in the circuit courts, meeting in equity cases in the month of July and August are not held.

Mr. Roney makes the same request.

Mr. Bullitt makes the same request.

Mr. Hart, in reply, says that he will be very happy to comply with the request of counsel; but, as he is only associate counsel in the cause, he desires that his colleague, Mr. Hoffman, shall answer for himself whether he will accede to the request of the gentlemen on the other side.

Mr. Hoffman desires the examiner to note that a week previous to this meeting he had informed Mr. McMurtrie that he desired to call a meeting at this date for the purpose of taking testimony;
96 that he also requested, in a note addressed to the examiner,

that notice of this meeting be sent to all counsel in the cause; that he understands from the examiner that this notice has been sent; that it has certainly been received by the counsel present that this notice contained no particular specification of evidence, but was simply a general notice that a meeting would be held; that he has brought two witnesses from New York at the expense of his client, who is a person of reduced means; that, as he has received no intimation of a desire to postpone previous to the meeting, he conceives the whole purpose of postponement to be to put his client to expense and delay; and while he is perfectly willing after the present meeting to adjourn to September, he must decline to accede to this request.

Mr. Bullitt withdraws; but it is agreed that he shall not waive his right to any objections.

Mr. Husband desires the examiners to note that he withdraws.

Counsel for plaintiff say:

From the minute-book of the N. C. G. A. Co., which is one of the books produced under the terms of the order heretofore made by this court, they offer in evidence page 7, down to the middle of the fifth line from the bottom of the page, ending with the words, "Amalgamating Company," being the minutes of a meeting of the corporation defendant, held in this city on February 13, 1874.

Also, from the same minute-book, page 35.

Also, of same book, page 38.

Also, of same book, page 39.

Also, from the papers so produced by the corporation defendant, under the terms of the aforesaid order, they offer in evidence paper dated "Philadelphia, February 13, 1874," and marked by the examiner "Exhibit A."

Also, from said papers they offer a certain writing in pencil, marked by the examiner "Exhibit B."

In order to save the trouble of producing the docket, Mr. McMurtrie, on behalf of the corporation defendant, admits in evidence the record of a certain judgment in which William A. Coit was
97 plaintiff, the N. C. G. A. Co. was defendant, in the C. C. P., No. 1, M., 1879, No. 228, the said judgment being for the sum of $5,489.82, with interest from May 10, 1879.

They also offer in evidence "Certificate Stock Book No. 1," produced by the defendant corporation under the aforesaid orders, showing that on the twelfth day of May, 1874, there was issued by the N. C. G. A. Company forty shares of stock to B. K. Jamison & Co., which is marked as certificate No. 78 in said Certificate Stock Book No. 1. They also offer in evidence Stock Certificate Book No. 2, produced by the defendant corporation under the order aforesaid, showing that there was issued on June 17, 1874, by the N. C. G. A. Company to B. K. Jamison & Co., one hundred and sixty shares of stock, and marked in said Stock Certificate Book as certificate No. 79.

AMOS HOWES, a witness produced on behalf of the complainant, being duly sworn, says:

Question. What is your age?
Answer. Sixty-six years.
Q. Where did you reside in 1874?
A. At Gold Hill, Rowan county, North Carolina.
Q. What was your business at Gold Hill, and how long have you been engaged at it?
A. Mining; I had been at mining for twenty years.
Q. What kind of mining?
A. Gold mining.
Q. Do you consider yourself experienced in the value of gold-mining machinery?
A. I do.
Q. Did you see the machinery of the N. C. G. A. Co. at Gold Hill, and the operation of said machinery in connection with the Crosby patent?
A. I did.

("Exhibit B" handed to witness.)

98 Q. Please examine this paper, marked "Exhibit B," and give us in detail what you consider the proper value of the articles therein appraised. What value do you place on the patent right marked No. 1 on this paper?
A. None at all for the Gold Hill ores.
Q. Did you see the process in operation?
A. Yes; a number of times.
Q. How did it work?
A. Not to my satisfaction; I did not think it did what they claimed for it.
Q. What was the first time you saw the process tried?
A. I saw it tried in the Old Dominion House, in Virginia, but did not see the result; it was in the fall of 1873.
Q. When did you next see it tried?
A. At Gold Hill.
Q. Did it succeed?
A. No; it did not succeed.
Q. What valuation do you place upon item second of the paper marked "Exhibit B?"
A. About 7,500.
Q. What is your valuation of the third item?
A. I think there is no valuation.
Q. State why you think there is no valuation.
A. Because there was no rent charged.
Q. Were you the owner of the land?
A. I was.
Q. Your valuation of item fourth; did you receive value for item fourth?
A. I received nothing for the contract.

Q. Would you have made the same contract on the same terms with any other corporated or responsible party?

A. Of course I would have made the same contract with any responsible party?

Q. Your valuation of No. 5?

A. I think about $7,500 would have been a fair price.

WILLIAMS CARTER, *Examiner.*

Cross-examined by Mr. RONEY:

Q. Is the machinery for mining the ore the same as for milling the ore?

A. In some respects it is.

99 Q. In what respect?

A. Both have steam-engines or water-power boilers, shafting, pulleys, etc.

Q. Did you execute a lease to the N. C. G. A. Co. for ten years of the eight acres which was the mill site?

A. I believe it was executed by B. A. Mitchell for the company with whom I had the contract?

Q. Did you sign the lease?

A. I did.

Q. Did you own the land?

A. I think I did; I had a full warranty deed to it, and the opinion of my lawyer that I owned it.

Q. Did you contract to furnish ore to the company to be worked in the said mill by the Crosby process?

A. I contracted to deliver twenty tons of ore a day to a mill to be erected on Gold Hill to be worked by the Crosby process.

Q. Did you make this contract before or after seeing the working of this procees and the Old Dominion mine?

A. This contract was signed some time afterwards.

Q. Do you know how many tons of machinery were sent from the Old Dominion mine to the Gold Hill mine?

A. I don't know; I never saw it weighed.

Q. Do you know whether any machinery was sent there from the Old Dominion mine?

A. Of my own knowledge I do not.

Q. Do you know whether any machinery was sent there?

A. I do.

Q. Was not there a building erected to put this machinery in?

A. Yes.

Q. What were the dimensions of the building?

A. I don't recollect.

Q. How many stories high was it?

A. On the side towards the road it was about one story; in the rear it was two or three stories; it contained three or four roasters and a high iron stack.

WILLIAM CARTER, *Examiner.*

100 FRANKLIN COIT, a witness produced on behalf of the plaintiff, being sworn, says:

("Exhibit B" shown to witness.)

Question. Were you at Gold Hill in 1874?

Answer. Yes, sir; I was.

Q. While there did you see the machinery of the company defendant?

A. I did.

Q. Look at item 2 of paper marked "Exhibit B" and tell me what valuation you place upon it.

A. I never saw it that I know of.

Q. You do not know anything about that item?

A. No, sir.

Q. Do you know anything about item five?

A. I don't understand the question.

Q. I want you to give me your valuation of the mill and all the machinery at Gold Hill without any reference to the patent right, simply the value of the materials, and at what date you place your valuation.

A. In the latter part of 1873 and the early part of 1874, prior to the purchase of the Gold Hill mines by the N. C. G. A. Co.; I considered the machinery new, and second-hand could have been duplicated at a sum not to exceed $15,000.

Q. Does that include all the machinery you saw there?

A. All the machinery I saw there, I believe, have been duplicated at that sum.

Q. State what knowledge you have of what property was there.

A. I was residing at Gold Hill at the time and was connected with the Gold Hill mines, and was familiar with most everything connected with them.

Q. Is this your valuation of all you saw on the land of the company defendant?

A. Yes, sir; that is my opinion of it.

Q. Explain why you had difficulty in answering my questions as to the items on Exhibit "B?"

101 A. "Exhibit B" seems to be a pencil memorandum with no direct connection with your question and the N. C. G. A. Company.

Q. Have you any knowlege as to items 1, 3, 4, and 6, on "Exhibit B?"

A. I knew of the Crosby process worked by the N. C. G. A. Company; I knew of the lease to the same company by Amos Howes; I have never seen the contract for furnishing ores, but knew of it; I have never seen the charter mentioned here.

Q. State whether or not all you know as to items 2 and 5 is contained in your valuation of property at Gold Hill.

A. I believe the mill that I referred to contained most of the machinery of the Virginia mill; I believe all my other knowledge is contained in the answer in which I valued the property at $15,000.

WILLIAMS CARTER, *Examiner.*

Cross-examined by Mr. RONEY:

Q. State in what capacity you were occupied at Gold Hill during the time you have stated you were there?

A. I had free access to every department of the mining business; I was trustee named in a mortgage to secure certain moneys to W. A. Coit.

Q. Whose mining operations were they?

A. The operations of Amos Howes.

Q. Did you ever superintend gold-mining operations or the milling of gold to extract ore?

A. Yes, sir.

Q. Whose milling operations at Gold Hill, and by what process?

A. Amos Howes', and by the Chilian process.

Q. Did you ever superintend the milling of ore by the Crosby process?

A. I have never superintended, but I have viewed it in operation.

Q. Did you ever construct a mill-house with its machinery for reducing ore and extracting gold?

102 A. I never have constructed one.

Q. Was there a large mill-house constructed on the eight-acre lot leased by Amos Howes to the North Carolina Gold Amalgamating Company?

A. There was a mill-house put up on the property presumably by the North Carolina Gold Amalgamating Company.

Q. What were the dimensions of the mill-house?

A. It was of an irregular shape, built on a side hill, forming at one point simply the height of a shed, probably some eight feet high, more or less, and in the rear its height was probably three or four stories, admirably adapted for milling purposes, and, in the hands of practical men, convenient. At the time I speak of (1873–4) there were, to the best of my recollection, two roasting cylinders with furnace attachments, a forty to fifty horse power engine, two boilers of about thirty-horse power each, a crusher, a pulverizer. I think there were two burr mills, if I remember correctly; one was borrowed from Mr. Howes; there were four amalgamators, a hoisting engine and boiler, proper screens, shafting, pulleys, belts, etc., necessary for running the machinery, with elevators, four wooden tanks and an analysis room with its outfits, and a high iron stack, close to forty feet high; this was the furnace stack; the above-enumerated articles were on the premises prior to the purchase of the Gold Hill mine by the North Carolina Gold Amalgamating Company in about May, 1874.

WILLIAMS CARTER, *Examiner.*

Redirect examination by Mr. HOFFMAN:

Q. Did you think of this building in connection with the machinery in your answer, in which you value the property at $15,000?

A. As I recollect the answer, I intended to include the building.

Q. How do you derive your knowledge of the cost of construction of gold-mining machinery?

103 A. I was entirely conversant with the cost of all machinery purchased during Mr. Howes' operation of the Gold Hill mine and from receiving numerous estimates from practical men for the erection of milling machinery for a mill with which I am now connected and have been for a period of two years.

WILLIAMS CARTER, *Examiner.*

Recross-examined by RONEY:

Q. What is the date of the estimates furnished of which you speak?
A. In the last two years.
Q. Did the company erect any other buildings on the premises?
A. I believe two small buildings.

WILLIAMS CARTER, *Examiner.*

Adjourned until September 29, 1881.

COIT *vs.* GOLD CO.

Meeting pursuant to adjournment of July 7, 1881, at office of examiner, September 29, 1881, 11 a. m.

Present: E. F. Hoffman, Esq., for complainant; Mr. Roney (vice Mr. McMurtrie), for the company defendant and General Cram; Mr. Nelson, for A. G. Elliot, Jos. B. Mitchell, executors of Jos. G. Mitchell; Mr. J. DeF. Junkin, for Henry H. Barton; Mr. W. H. Smith, for Mr. Cobb; Mr. Farley (vice Mr. Archer) for the Misses Boggs (also vice L. C. Cassidy) — for Mrs. Cram's executors.

The examiner notes, at Mr. Hoffman's request, that he caused notices of this meeting to be sent to all the counsel in the case.

Mr. Neilson asks the examiner to note his protest in conjunction with his colleague, W. A. Husband, to the meeting held
104 July 7, 1881, as he received no notice of the same until after the meeting.

Mr. W. H. Smith states that he received no notice of the meeting of July 7, 1881.

Stated on behalf of Mr. George Junkin that he was absent in Europe from the fourteenth day of June, 1881, and, supposing that the case would be adjourned over the summer according to the equity practice, made no provision to have himself represented in the proceedings during those months.

Mr. Farley (vice Messrs. Cassidy and Archer) asks the examiner to note the death of John J. Smith, one of the defendants of this case, and that a suggestion of that fact was filed of record on September 29, 1881.

Mr. Barringer, representing a judgment creditor of the Gold Company, defendant about to intervene, desires to inspect the books of the company.

(Objected to by counsel for defendants.)

Mr. Smith objects to the testimony taken at the previous meeting, having had, as he says, no notice of the meeting.

Mr. Hoffman, for plaintiff, calls on General T. J. Cram, the president of the corporation defendant, for the production of a certain

letter mailed to him by Messrs. Hoffman and Biddle on about the 25th of February, 1880, making a demand on the corporated defendants that they should collect the stock subscriptions due to the said corporated defendants by the subscribers to its stock.

(Objected to by Mr. Roney and Mr. Smith as incorporating the alleged contents of the letter.)

Mr. Hoffman asked for an answer to his request for the letter, and the counsel for the defendants reply that they cannot answer at this time on account of insufficiency of notice.

Mr. Hoffman, for defendants, desires the examiner to note that he will continue his evidence when the codefendants have had
105 an opportunity to make search for this letter and respond to the demand for its production. He therefore adjourns the meeting.

All counsel present at this meeting and not present at the July meeting give notice to the counsel for complainants that they will object to the testimony taken at the July meeting being considered either by a master or before the court. They will, at the proper time, make a motion to strike the testimony from the record.

Mr. Hoffman, for the plaintiffs, desires the examiner to note whether or not Gen. T. J. Cram did not personally take part in the cross-examination of the two witnesses produced at the first meeting, and whether or not Mr. McMurtrie was not present in his office while all of the said testimony was being taken in his said office.

The counsel for the defendants object to any statements and entry on the minutes being made by the examiner of what had taken place at the previous meeting.

The examiner states that Mr. McMurtrie was present in his office during at least part of the time occupied by the meeting in July, and that, to the best of his recollection, General Cram took part in the cross-examination of the two witnesses.

Meeting adjourned until Friday, October 7, at 3.30 p. m.

WILLIAMS CARTER, *Examiner.*

106 COIT *vs.* GOLD CO.

Meeting at examiner's office October 14, 1881, at three o'clock.

Present: Messrs. E. F. Hoffman and C. Hart, for plaintiff; Mr. W. H. Smith and Thomas Neilson; Mr. Farley and Mr. Roney, for defendants.

All other parties were duly notified of this meeting by the examiner.

Present: Mr. Husband.

Mr. W. H. Smith saves to himself the right to object to all the evidence taken on July 7th as a whole, because neither himself nor client had any notice of the meeting, and adds this further objection to all exhibits introduced at that meeting as immaterial, and to the evidence of the witnesses as also immaterial to the value of the patents and other property.

The meeting here adjourned till Friday, October 21, 1881, Mr. Hoffman and Mr. Hart remaining in the examiner's office to examine the minute-book produced by Mr. Roney for the defendant.

107 COIT *vs.* GOLD CO.

Meeting pursuant to adjournment of October 14, at office of examiner, 416 Walnut street, October 21, 1881.

Present: Messrs. Hoffman and Hart, for complainant; Junkin, Husband, Roney, Farley (for Cassidy and Archer), George Bull, and Thomas Neilson.

Mr. Bull, on behalf of B. K. Jamison & Co., says that he has attended every meeting of which he had any notice; that it now appears that some testimony has been taken of which he has no knowledge; that he claims the right under these circumstances to make any objection on behalf of his clients to this testimony or any portion thereof.

Counsel for plaintiff, in reply, state that they understand that the examiner did notify Mr. Bull as well as the other counsel representing the other defendants, and pray that the examiner may now note whether that is so or not.

The examiner states that in every instance of every meeting he notified or caused to be notified all and every the counsel engaged in this cause.

Mr. Bull responds that he knows nothing about any understanding in the matter, but that he has always attended the meetings before the examiner when he received a notice; that in any event in equity he is entitled to object to the evidence taken in this cause, or especially to evidence taken *ex parte*.

Counsel for plaintiff offer in evidence the minutes of a meeting held on the twelfth day of March, 1880, and found on pages 204 and 205 of the minute-book of the North Carolina Gold Amalgamating Company, which book has been produced under the order of the court.

They further offer in evidence page 209 of the same minute-book, containing the proceedings of a stockholders' meeting.

Mr. Junkin, on behalf the parties interested represented by him, objects to all minutes offered as irrelevant and incompetent,
108 as not duly or legally evidence, and he also asks that the examiners have copies of the minutes made to form part of his report.

Messrs. Archer and Cassidy, for the interests represented by them, unite in this objection and request.

Messrs. Neilson and Husband, for the interests represented by them, also unite in this objection and request, and further add that they never had any notice, directly or indirectly, of any application or order made thereon to or by the court for the examination or inspection of books not prayed for by the complainant's bill.

Mr. Bull joins in the above objection and request, and objects further that there is no legal evidence that the minutes offered are genuine or authentic; consequently they are not evidence.

Counsel for plaintiffs here close and call upon counsel representing the defendants to proceed with their side of the cause immediately, or as soon as convenience will permit.

Mr. Husband, representing part of the interests, responds and suggests that as these meetings have been frequent and irregular (so far as attendance is concerned), the complainants should notify the numerous defendants that their, the complainants', case has been closed, and that they, the respondents, are now called upon to appear and make defence.

Counsel for defendants present request that the next meeting be fixed for November 11, at three o'clock.

Counsel for plaintiffs, in compliance with this request, agree to this adjournment, but desire to state that they must insist upon the cause being duly speeded hereafter.

Counsel for respondents responds the cause shall be speeded as far as witnesses within this jurisdiction are concerned.

Meeting adjourned until November 11 at three o'clock.

WILLIAM S. CARTER, *Examiner.*

109 COIT *vs.* GOLD CO.

Meeting before examiner, November 11, 1881, at 3 o'clock p. m.

Present: Messrs. McMurtrie, Roney, Hoffman, Hart, Junkin, Neilson, and Farley.

Mr. McMurtrie, *the* behalf of the defendants he represents, offers in evidence the exemplification of the charter of the company defendant, marked "Defendants' Exhibit A."

Gen. T. J. CRAM sworn:

Letter produced, marked "Defendants' Exhibit B," from Amos Howes to Joseph G. Mitchell, July 10, 1873.

Mr. MCMURTRIE:

Question. Do you know the handwriting of Amos Howes?

Answer. I do.

Q. Is this letter written by him?

A. It is.

(Paper shown witness, marked Defendants' "Exhibit C.")

Q. What is this paper?

A. It is the original subscription to the stock for $100,000.

(Mr. McMurtrie offers in evidence p. 7 of the minute-book of the company and p. 18 of the same.)

(Paper shown witness, marked "Exhibit D.")

Q. What paper is that?

A. That is the original transfer from the U. S. Gold and Silver Amalgamating Co. of Va. to the N. C. G. A. Co.

[Q.] Look at exhibits produced, marked "Exhibits E, F, G, H, I, K, L, M, N, O, P, Q, R, and S," and state what they are.

110 A. They are the certificates given to the members of the association and others by the association (N. C. G. A. Co.) before incorporation, showing their interest in that association.

(Mr. McMurtrie puts in evidence p. 87 and pp. 90 and 92 of the N. C. G. A. Co.'s minute-book.)

(Paper shown witness, marked "T.")

Q. What is that?

A. This is the relinquishment and cancellation by the stockholders of the stock received by them out of the new stock.

Mr. McMurtrie puts in evidence the stock certificate books showing the surrender and cancellation of the increased stock received and the issuing of new certificates for the smaller number of shares, as stated in the answer.

Mr. McMurtrie agrees that the time for making objections to testimony is at the time when it is proposed to be read to the court.

(The witness says that stock-book No. 1 shows the issue and cancellation of the old stock and stock-book No. 2 shows the issue and cancellation of the new stock.)

(Signed) THOS. J. CRAM.

Meeting adjourned to Friday, November 18, at three o'clock.

Witness recalled by request of Mr. JUNKIN:

Question. Was Henry H. Barton an original subscriber?

Answer. He was not. He became the holder of five shares by transfer from Mr. Bockius on May 22, 1874, and this is the certificate issued to him of that date, May 22, 1874, namely, certificate 85 in certificate stock book No. 1, which certificate was surrendered and cancelled and pasted back in certificate book No. 1 at the place from which it was originally cut.

111 In lieu of this certificate thus surrendered there were issued to him, on June 5, 1874, two certificates, each for ten shares, numbered 49 and 50, respectively, out of this new or increased capital stock, and these two certificates were subsequently surrendered and cancelled, pasted back on the stubs of the certificate book from which they were originally cut, being certificate book No. 2.

This surrender was in accordance with a resolution of the stkocholders at their meeting November 5, 1874.

The actual surrender was made shortly after this resolution. I can't remember that any certificate was issued to him, but he got a receipt entitling him to five shares for the twenty thus surrendered.

(Mr. Junkin agrees that any objection may be taken at the time of the argument in court.)

Cross-examined by Mr. HOFFMAN:

Q. Were not a number of judgments obtained against the corporation defendant during the summer and early fall of 1874, and executions issued on some of these judgments prior to November 5, 1874, the date of this cancellation of stock?

(Mr. Junkin objects—first, that this is not cross-examination as to anything asked by him in chief, or by any other counsel who examined the witness; second, that the records of the judgments and executions are the best evidence.)

A. To the best of my knowledge and recollection, there were not any such. I was absent during that summer and don't remember when I returned.

Q. What time did you go away and when did you return?

A. I can't answer exactly to that.

Q. Do you mean to say you were absent that year from the 1st of July till the 5th of November?

A. No; I mean to say that I left the city in June or July and got back some time in October. It was not my business to attend to the company's debts, although I was a director and consulting engineer.

(Signed) THOMAS J. CRAM.

WILLIAMS CARTER, *Examiner.*

112 COIT *vs.* GOLD CO.

Meeting pursuant to adjournment of Friday November 11, 1881 at office of examiner.

Present: Messrs. McMurtrie, Roney, Farley (for Cassidy & Archer), Neilson, Smith, Bull, Hoffman.

Mr. McMurtrie offers in evidence four letters from Mr. Howes (marked "U," "V," "W," and "X").

General CRAM called.

Question. Are those letters from Mr. Howes?

Answer. They are.

Plaintiff produces a paper marked "Z," being an assignment of a patent right.

Paper shown witness marked "A, No. 1," being a contract between Howes and B. A. Mitchell; and paper marked "B, No. 1," being a contract between Howes and B. A. Mitchell; and paper marked "C, No. 1," being a certified copy of deed from Howes to corporation; and paper marked "D, No. 1," being a deed from Baily to the corporation; also paper marked "E, No. 1," being a scheme for the settlement with the New York Company mentioned in the answer; also "F, No. 1," being a record of judgment of Cram against the company.

113 All these are offered in evidence.

Mr. Hoffman objects to the admission of these papers.

Mr. McMurtrie asked Mr. Hoffman to state the grounds of his objection.

Mr. HOFFMAN: For irrelevancy.

Mr. McMurtrie to witness:

Q. General Cram, state in what manner you became a member of the association which was afterward incorporated as the North Carolina Gold Amalgamating Co., and what was the consideration you

paid, and how it was paid, for the stock that was issued to you out of the $100,000 original capital stock.

A. I became interested in the association in September, 1873. I was first approached by the association through its treasurer, who explained to me the condition and the wants of the association: First, that they wanted my services in the capacity of consulting engineer for the association to examine professionally the capacity of the "Crosby process" for extracting gold from sulphuret gold ores; also for examining into the reports of the success of the process; also of the nature of the machine requisite for the reduction of such ores; also for examining the reports of the State geologist of North Carolina, Emmons, upon the Gold Hill mine, Rowan Company, North Carolina; also into the history of the products of that mine; also to make a report to the association in reference to the probability of the profit or loss of said process in working the ores of that mine; and for such services it was agreed that the association should pay me $20 a day for my services of ten hours' labor per day.

Next the association wanted me to loan or advance moneys to them for the purposes of carrying on the operations of the association. My reply to the advancing of money was that I would do so provided, on my own investigation, I should judge the process to be applicable profitably for the reduction of the North Carolina Gold Hill ore.

It was then understood that the amount for my services and the amount of money that I should advance (Mr. Hoffman objects to oral testimony of any agreement unless it be shown there is
114 no written contract). (Witness replies that he don't remember any written agreement) would be received by the association as entitling me to an interest in all the assets *pro rata* of the association or of the company which the association intended to form and obtain a charter for, provided I myself should deem it my own interest to take stock in the corporation.

After investigating the subject to a certain extent in my capacity of consulting engineer, and becoming satisfied that it was a favorable enterprise, I agreed to advance or loan moneys to the association by installments. I did loan them money to the amount, all told, of twenty or twenty-four hundred dollars. This is as near as I can recall, it being more than eight years since. This money and the services amounted to over $3,000. When the settlement was made with the treasurer of the association I received from him a certificate ("Exhibit E" shown witness) entitling me to thirty shares in the capital stock of the N. C. G. A. Co. That was the way in which I paid for the thirty shares of the original stock of the $100,000 capital. I bought ten other shares in the market from a person who had got it from the company as paid-up stock. I paid for it, par or nearly par, in money. That is all the stock I had until the increase of the capital to $1,000,000.

I also assigned by a written agreement all right, title, or interest whatsoever I had acquired in virtue of my services and loan of money in the association unto the N. C. G. A. Co.

(Mr. Bull, on behalf of B. K. Jamison & Co., stated that until it was made to appear that his clients were in any way interested in the N. C. G. A. Co. at or since the time the plaintiff's judgment was obtained he considered it unnecessary to offer any evidence.)

Cross-examined by Mr. HOFFMAN:

Question. You stated in your answer that you received thirty shares of the stock of the incorporated company for a loan of some $2,000 and services rendered to the N. C. G. A. Co. while an
115 association and before it obtained a charter and became a corporation; what application was made of the money so loaned?

Answer. I have not stated in my examination-in-chief what is implied in this question.

Q. How much did you loan to the company before incorporation?

A. I loaned to the association, before it was incorporated, from $2,000 to $2,400.

Q. What application did the association make of this money?

(Mr. Roney objects that General Cram has stated that he was not connected with the association except as stated above.)

A. I was not a member of the original association and had no connection with it, otherwise than as I have stated, except on a few days previous to the organization of the chartered company, when, on invitation, I was present at a meeting or meetings to talk over the proposed plan of organization into an incorporated company. In regard to the use of the money which I had loaned, I cannot testify of my own knowledge.

Q. Do you know whether the association purchased any property with it, or whether they spent it in their running expenses?

A. I think that some of it——

(Mr. Roney objects unless General Cram can state of his own knowledge.)

Some of the fund which this helped to make up was expended in sending to Raleigh, N. C., to obtain the charter, and some of it was expended in sending an attorney to Gold Hill to examine into the mine, with a view of making the contract with Amos Howes for delivering ore to the mill to be built for the reduction of the ores of that mine; and I also think some of the fund was expended in moving machinery from the "Old Dominion" mine in Virginia to the Gold Hill mine, in North Carolina.

Q. Then this $3,000 which you paid for thirty shares of
116 stock represented a claim for services and money loaned by you to the association, and after it became incorporated the corporation accepted the release of this claim against the association as payment for the stock of the company incorporated? Is not that so?

A. The release of this claim that I had against the association and the assignment of all the right, title, and interest that I had in the property of the association unto the incorporated company were re-

ceived in full payment for the stock for thirty shares of full-paid-up stock.

Q. Was your interest in the association, your claim for money loaned, and your claim for services rendered evidenced by any written agreement?

A. (Witness refers to "Exhibits A and E.") I can't remember whether at the time there were any written agreements or not; it is more than eight years ago; whatever agreement I made, whether written or verbal, I held as sacred as if put in writing.

Meeting adjourned until Friday, November 25, 1881.

T. J. CRAM.

WILLIAMS CARTER, *Examiner.*

117 COIT *vs.* GOLD CO.

Meeting before examiner pursuant to adjournment of November 18, 1881, at three o'clock.

Present: Messrs. Hoffman and Hart, for plaintiff, and Messrs. Neilson, Junkin, Bull, Farley (for Archer and Cassidy); Bullitt, Roney, and McMurtrie.

LLOYD P. SMITH sworn (for defendant).

Counsel for plaintiff desires Mr. McMurtrie to state what he proposes to prove by the testimony of Mr. Smith.

Mr. McMurtrie declines to do so until there is some one to say whether this is admissible or not, which will be when the testimony is read in court.

Counsel for plaintiff objected to the examination of Mr. Smith.

Q. Were you a member of the company which was ultimately chartered, known as the N. C. G. A. Co.?

A. No, sir.

Q. Had you any interest in that association or their property?

A. Yes, sir; I contributed money to it.

Q. How much had you contributed and are those the vouchers for the payments?

(Objected to as irrelevant and inadmissible.)

A. I contributed $2,000, and these are the vouchers.

(Four checks produced, marked G, Nos. 1, 2, 3, 4.)

Q. What did you receive, if anything, from the corporation in satisfaction of that loan?

(Objected to.)

A. I received twenty shares of the N. C. G. A. Company's stock.

118 Q. What amount of stock did you subscribe for and agree to take?

(Objected to.)

A. Twenty shares.

Q. After the corporation was incorporated did that corporation become indebted to you; and, if so, how and to what amount?

(Objected to.)

A. It did become indebted to me by my lending it money to the amount of $15,081.63.

(Account annexed.)

(Account objected to, and objection to annexing the account.)

Q. Look at the documents now produced and say if they are the vouchers for those loans.

A. They are, except two, which are in the hands of counsel in another case.

(Papers marked "Exhibit I," Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14.)

Cross-examined by Mr. HOFFMAN:

Q. Was any portion of these moneys loaned by you before the date of incorporation, June 30, 1874?

A. Not one dollar.

LLOYD P. SMITH.

General CRAM recalled:

Counsel for plaintiff requests Mr. Roney to state what he proposes to prove by this witness.

Mr. Roney declines, as this examination is a continuation of the examination of General Cram at the examination-in-chief at the last meeting, which examination was suspended by consent of counsel in order to allow Mr. Hoffman to cross-examine, and now the witness' examination-in-chief is to be resumed.

Mr. Hoffman, counsel for plaintiff, refers to the record, which will show that at the last meeting he concluded his cross-exam-
119 ination, and that the adjournment was at his suggestion, and there was no agreement made except that General Cram should be recalled without being resworn at the next meeting to give further testimony for the defence.

Mr. Hart says he was absent in Pittsburgh at the time of the last meeting, and has no knowledge of what transpired at the said meeting. He has had no opportunity as yet of examining General Cram's testimony then given, and now objects to the examination of the witness without a previous statement of what is proposed to be proved by the examination of General Cram.

Counsel for the defendant (Mr. Roney) further says that he declines to accede to the request of Mr. Hart and refuses to have the examination of the witness interrupted at this stage of the examination; that Mr. Hoffman was present when the witness was called for examination at the last meeting, and the demand should then have been made.

(By Mr. RONEY:)

Q. Were you acquainted with the Gold Hill mines, North Carolina, belonging to the company defendant?

A. I was acquainted with the said mine before it belonged to the company, and while it belonged to the old company, by my own personal professional observation and by the representations made by one Amos Howes, who claimed to own the mine (objected to) and to have worked its ores for three years past at the time of making this representation. These representations were made to me in this city by the said Howes, at several meetings with him late in the fall of 1873 and early in the year 1874—previous to the organization of this chartered company.

I was acting in my professional capacity as consulting engineer; he represented to me that the ores of that mine averaged $100 a ton in assay of gold and sixty pounds of copper; that he had sent several tons of his ore to be worked by the Crosby process, then in operation at the Old Dominion Mine, Virginia; he had been there and seen the process work upon his ores, as he stated to me, and that the process was a perfect success, and that he was very anxious to have it moved up to his mine; that he had made a contract to furnish the mill (if one was constructed there to be worked by
120 that process), and that he agreed to furnish the mill with the ore that should assay the average of $100 a ton in gold——

(Mr. Hart, of counsel for plaintiff, objects to all this line of testimony, not only as inadmissible and irrelevant but because it is not even responsive to the question asked the witness.)

And sixty pounds of copper.

Q. Was there any failure of the Crosby process as applied to Gold Hill ore belonging to the company defendant?

(Objected to.)

A. There was not.

Q. What was the failure, then, to produce ore in paying quantities?

(Objected to.)

A. Mr. Howes failed to furnish the ore according to his contract.

Q. Mr. Howes has testified that the value of the machinery brought from the Old Dominion mines was $7,500. What was the value of that machinery?

A. The corporators valued it at (objected to) $15,000, and that is my estimation.

Q. What amount of money was turned over by the N. C. G. A. Company, before its incorporation, to the incorporation defendant?

A. Fourteen thousand three hundred and odd dollars.

Q. Amos Howes has testified that he received nothing for the contract to furnish ore; is that true?

A. No, it is not; he was to have half the profits resulting from the milling of the ore, and was also to be paid $7 a ton for furnishing

the ore; he also received from the company, to enable him to carry out the contract, $5,500 in advance to enable him to furnish ore to the mill.

T. J. CRAM.

121 Mr. Bullitt calls General CRAM on behalf of F. M. Lewis, executor of John Hulme, deceased.

Q. Was the N. C. G. A. Company a debtor to John Hulme and to his estate; and, if so, to what amount?

(Objected to.)

A. It was a debtor to John Hulme for money loaned about 10th April, 1874, to the amount of $1,000.

Q. Has that debt ever been paid, or any part of it?

A. No.

No cross-examination.

T. J. CRAM.

Adjourned until December 2 at 3 o'clock.

122 COIT *vs.* GOLD CO.

Meeting pursuant to adjournment of Friday, November 25, 1881, at office of examiner, 416 Walnut street.

Present: Messrs. Hoffman and Hart, for plaintiff; Messrs. Bull, Farley (vice Cassidy and Archer), Neilson, Roney (for McMurtrie).

Mr. Roney and Mr. McMurtrie, for Messrs. Cram and Lloyd P. Smith and the company defendants, ask the examiner to note that they here close their testimony.

Meeting adjourned till Friday, December 9, at three o'clock.

123 COIT *vs.* GOLD CO.

Meeting before examiner December 9, pursuant to adjournment of December 2d.

Present: Messrs. Hoffman, Hart, Roney, Farley, Neilson.

Mr. Farley calls General CRAM on behalf of Miss Virginia C., Carrie A., and Miss Emily Boggs, for themselves and for Miss Virginia C. Boggs and Miss Carrie Boggs as executors of Mary Cram, deceased.

Question. Do you know these defendants?

Answer. I do.

Q. Were they the owners of any stock in the N. C. G. A. C.?

A. They were.

Q. How much?

A. Three shares each, and Mary Cram one share of the original capital stock of $100,000; they purchased their respective shares in the open market on the 16th of March (or about that date) (objected to by Mr. Hart as irrelevant), 1874, and paid for it in cash as fully-paid-up stock; they never subscribed for this stock to the company.

124 Q. From whom did they purchase the stock?

(Objected to by Mr. Hart as irrelevant.)

A. They purchased from the W. S. Gold and Silver Amalgamating Company of Virginia.

Q. What connection had these ladies with the association?

A. None whatever, any further than to own the stock.

Q. What became of the original shares held by them?

A. They received notice from the company defendants—that is, the N. C. G. A. C.—on or about the 20th May, 1874, that they could receive four shares of the new increased capital stock for each one of the old shares, provided that they would surrender and have cancelled all their old shares, which they did, and that was intended in full payment for the new stock.

(Objected to by Mr. Hart as irrelevant.)

They never subscribed for the new stock, nor did they agree to pay anything for it except by surrender of the old.

(Objected to as irrelevant.)

Q. Were any other new shares sold by the company to the defendants?

A. No, sir; not for cash.

Q. What became eventually of these increased shares owned by these ladies?

A. On the 5th of November, 1874, they were notified and requested by the company to surrender all the shares of the new stock which they had received and have them cancelled and receive a certificate for one share for every four of these new shares surrendered; they acceded to this, surrendered the shares, and had them cancelled.

(Object to as irrelevant.)

Q. What became of those shares issued to the ladies in lieu of the shares surrendered by them on November 5, 1874, for cancellation?

A. They were (some time in 1876) disposed of by returning them to the company.

(Objected to as irrelevant.)

125 Q. What loss did they sustain on their shares?

A. All that they paid for the original stock, never having realized any benefit whatever.

(Objected to as irrelevant.)

I believe they paid something near par for the stock.

No cross-examination.

T. J. CRAM.

Counsel for plaintiff request the examiner to notify all the counsel for defendants to proceed with the taking of testimony if they have any to offer, that the cause may progress with reasonable diligence.

Meeting before examiner December 16, 1881, at three o'clock.

Present: Messrs. Hoffman, Hart, Roney, Farley, Neilson, and Bull.

Messrs. Neilson and Husband, representing some of these defendants, before offering any evidence on part of their clients, now called upon the complainant's counsel to know when it will suit their convenience to hand over Amos Howes and Francklyn Coit (witnesses examined on part of complainants in July last) for cross-examination.

Counsel for complainants reply that these two witnesses were present at the metting referred to ready to be cross-examined, and were actually cross-examined by Mr. Roney and General Cram——

(Mr. Roney objects that it was not true that General Cram took any part in the cross-examination, except to suggest questions to Mr. Roney.)

(Counsel for complainant withdraw their statement as to General Cram upon the representation of Mr. Roney.)

and might have been cross-examined by any other of the counsel present.

Mr. Husband on that occasion withdrew and thereby lost the opportunity of cross-examination at that time.

Counsel for complainant, however, will immediately communicate with the witnesses and request their attendance in compliance with Mr. Husband's wishes.

127 Mr. Husband responds that he desires it understood, as he sought to have it understood in July, that his protest against these proceedings was mainly based upon want of sufficient notice of that meeting, and because of the absence of his colleague, who had received no notice of the meeting, and without whose presence he could not proceed. And he desires further to add that unless these two witnesses referred to are produced for cross-examination within the next twenty days he will thereafter move the court to strike out all the testimony so far as it affects the interests of his clients.

Counsel for complainant ask Mr. Husband whether his clients will pay the fare of those witnesses from York (where they reside) to Philadelphia and back.

Mr. Husband says: The answer to that is "No;" unless they admit upon the record that they are too poor to pay it themselves.

THOMAS H. NEILSON, sworn, says:

Examined by Mr. HUSBAND:

I am counsel, with Mr. Husband, for a number of the defendants in this case.

Question. Where were you in July last?

Answer. I was in the city up to the morning of the 4th of July, when I left the city for a little vacation.

Q. Did you ever receive any notice of the meeting of the 7th of July?

A. Not until a week after it was held.

Q. What relation did you occupy in this case, as counsel, as to the conduct of it?

A. I was originally the counsel, and conversant with the facts of the case, and entered an appearance for the defendants. I took Mr. Husband in as senior counsel, being one of the defendants myself. I drafted the answer of the defendants, whom I represented. I had no intimation of the meetings being held, and didn't suppose that there was to be a meeting in the summer; consequently I didn't thoroughly post Mr. Husband in regard to it, so that he could have gone on without me.

128 Q. Were you one of the original stockholders of this company, and to what extent?

A. I was, and am the owner of twenty shares.

Q. Can you state when Mary A. Neilson became a stockholder, and the extent of her stock?

(Objected to.)

A. The books of the company will show that it was before the increase of the capital, and I bought it in the open market; I bought fifteen shares and paid par for it; I subsequently bought (I think after the increase of the capital) ten additional shares for her; I think at about par.

Q. What became of the certificate or certificates of the shares which you held in your own right, and what became of those held by Mary A. Neilson?

A. At the time the capital stock was increased myself and Mary A. Neilson received notice as stockholders from the company that if I would surrender my twenty shares of original stock and Mary A. Neilson her fifteen shares of original stock that the company would give me in exchange eighty shares and Mary A. Neilson sixty shares of the increased stock. We assented to this, delivered our certificates, and took our increased stock.

Q. What became of your certificates of increased stock?

A. In November, 1874, at the request of the company, and in order to meet the views of the N. C. Ore Dressing Company, we surrendered our increased stock, and got a receipt entitling us, to wit, Thomas H. Neilson twenty shares and Mary A. Neilson seventeen and a half shares; the seventeen and a half shares cost Mary A. Neilson about $2,500.

Q. To what extent was the capital of this company increased when you bought the original shares?

A. It was increased from 1,000 shares to 10,000 shares, and money increased from $100,000 to $1,000,000; I originally owned about one-fiftieth of the company; I now own one five-hundredth.

Q. When you were the owner of one-fiftieth of the company, what did your stock cost you?

A. I paid par for it.

129 Q. And what was the cause of the diminution of your interest?

A. The increase of the capital ten times, while my interest remained the same.

Q. Are you in debt to this corporation upon your stock or upon any other account?

A. I am not; on the contrary, the company is indebted to me for moneys advanced or services rendered some $3,600.

Q. Of your own knowledge, can you state whether Mary A. Neilson is or is not indebted to this company on the stock account or on any other account, and your reason for your knowledge?

A. Mary A. Neilson is my mother, and I was living at home with her at the time of these transactions in 1874; I bought the stock for her and represented her; she never attended a meeting of the company (to my knowledge), and does not owe it a dollar.

Q. Do I understand from your examination that Mrs. Mary A. Neilson and yourself bought the stock to which you have referred as full-paid-up stock?

(Objected to.)

A. Yes, sir.

No cross-examination.

130 COIT *vs.* GOLD CO.

Meeting before examiner, December 23, 1881, at three o'clock.

Present: Messrs. Hoffman and Hart, Farley, W. H. Smith, Neilson, Husband, and Roney.

JACOB D. MITCHELL sworn.

Question. Are you one of the defendants in this case?

Answer. I believe I am, sir.

Q. Were you and are you a stockholder of this company? If so, state your connection with this company.

A. I held——

(Objected to—witness reading paper.)

(Mr. Husband responds that the witness has reduced his testimony to writing, and for the purpose of economy of time he proposes to refresh his memory as he reads along.) 10 shares of stock in said company when the capital stock consisted of 1,000 shares equal to $100,000; I was then owner of the one-hundredth part of the corporate property.

These twenty shares were not obtained from said company by subscription or otherwise, but were purchased as full-paid shares in open market. Under a proposition made by said company I surrendered to said company my one one-hundredth part of the corporate property. I received in lieu thereof forty shares full paid, in the increased capital stock of the company, which, at that time, consisted of 10,000 shares, equal to $1,000,000, thus making me the owner only of forty ten-thousandths, or one two-hundred-and-fiftieth part, in lieu of my former holding of one one-hundredth part, having given to the company toward the purchase of the Gold Hill property and for procuring working capital, three-fifths of my original holding,

and later these forty shares were returned to the company
131 and ten shares received in lieu thereof—not, however, ten shares as originally held, but ten shares in a capital of $10,000 in lieu of the original ten shares in 1,000; so that after this second surrender I held only one-thousandth part in lieu of a one-hundredth part—the company having received from me nine-tenths of my original holding; and then, after giving the company nine-tenths of my property, for which full par value had been paid, I am charged as being debtor to the company by reason of this very surrender, when, in fact, instead of being a debtor to the company, I am a creditor of the company to the sum of about $1,000, never having received from the treasurer of the company any money or other consideration for time or service given to the business of the company.

(Mr. Hoffman objects to this answer as argumentative and involving conclusions of fact and of law. Mr. Husband responds that the figures of the witness' computation were made by the witness in the last twenty-four hours, for the purpose of saving the necessity of doing it here during his examination.)

Q. Are you in debt to the company in any sum of money whatever?

A. No, sir.

(Objected to.)

Cross-examined by Mr. HOFFMAN:

Q. What amount of capital did the increased issue purport to represent?

A. $1,000,000, raised from $100,000.

Q. What was the par value of this increase?

A. The same as the original stock, namely, $100 per share.

Q. Did you not place some of this increased stock during the summer? (Objected to.) I mean by placing negotiating the sale of it.

A. No, sir; I don't remember to have ever placed any of the stock in 1874.

Q. You were not the Mr. Mitchell mentioned in the pamphlet in August, 1874, as having negotiated the sale of this increased issue of stock?

(Objected to by Mr. Husband.)

132 A. I decline to answer that question unless I can see the pamphlet.

Q. Did you not undertake to place a portion of this issue in the summer of 1874?

A. My answer to that will depend on the sense in which this word undertake is used.

Q. Did you not solicit subscriptions, and did you not go on to New York to make a sale of a portion of the stock?

(Objected to by Mr. Husband.)

A. To the best of my knowledge and belief, I never mentioned stock to anybody in New York, and I don't now remember visiting the city of New York in the summer of 1874.

Q. Did you solicit subscriptions to this increased stock anywhere?

(Objected to.)

A. I shouldn't use the word solicit in reference to anything I did with that stock. I now remember but one person to whom I spoke about purchasing any of this increased stock.

Q. You were not, then, the person mentioned as the financier who was to place 5,000 shares of this increased issue?

(Objected to.)

A. I wouldn't like to swear that I never had been mentioned; I wouldn't like to swear what all creation had been doing.

Q. I mean the person mentioned in the pamphlet published in 1874 as having placed a portion of this stock, and as having been deterred by sickness from carrying out the enterprise? State any transactions you were engaged in in the summer of 1874 with reference to this stock.

(Objected to by Mr. Husband.)

A. I must decline to answer the first part of that question for its indefiniteness. I don't remember being engaged in any transactions in reference to that stock.

133 Q. You say that you did not have anything to do with solicitations for subscriptions to this stock, or negotiations, or the sale of the same?

(Objected to.)

A. To the best of my belief, I spoke about that stock being for sale to only one person.

Q. What was said to that person?

(Objected to.)

A. I can only give the general substance of what was said. The person referred to was familiar with the fact of the increased stock, and, as I remember now, I asked him if he wouldn't like to take some of it. I did not go to see him for that purpose.

Q. At what price did you propose to negotiate the sale of it?

(Objected to.)

A. Fifty cents on the dollar of the par value of it.

Re-examined:

Q. In these questions, as to your alleged negotiations of this stock, when you say you offered it at 50 per cent. of its par value, whose stock were you thus proposing to sell?

A. It was a portion of the stock under the increased capital which had been placed in the treasury of the company to procure additional working capital.

Q. Did you succeed in selling any of this stock in the manner and form that you have stated and to the person you say you offered it?
A. No, sir.

Mr. Hart, who was not present at the time of the examination-in-chief of the witness, objects to all that part of his examination in which the witness goes into a calculation to show the proportion of the witness' interest in the company and its capital, and in which the witness states that he bought the stock at par, or as full-paid stock, as irrelevant, immaterial, and incompetent.

J. D. MITCHELL.

WILLIAMS CARTER, *Examiner.*

134 COIT *vs.* GOLD CO.

Meeting before examiner, Friday, January 6, 1881, at three o'clock.
Present: Messrs. Hoffman, Hart, Junkin, Bullitt, Neilson, Roney, and Bull and Farley.

On behalf of the estate of John Hulme, deceased, Mr. Bullitt offers in evidence the minutes of a special meeting of the directors of the N. C. G. A. *A.*, held February 26, 1879, and set forth on pp. 186, 187, 188, 189, 190, 191, 192 of the minute book of the company heretofore identified, for the purpose of showing that on that date the estate of John Hulme, deceased, was a creditor of the said company to the amount of $1,306.17, made up of $1,000 principal debt and $306.17 interest thereon to June 1, 1879, and for the further purpose of showing that this debt was on that date acknowledged by the N. C. G. A. Co. as a just and proper claim against it.

Counsel for the plaintiff object to the offer as incompetent and immaterial.

Adjourned until Friday, January 13, at 3 o'clock p. m.

FRIDAY, *January* 13, 1882.

Present: Messrs. Hoffman and Hart, Roney, Farley.

General CRAM recalled on behalf of the Misses Boggs and Mrs. Cram's executrixes.

By Mr. FARLEY:

Question. Please explain the connection of Mr. Coit, the plaintiff in this case, with the N. C. G. Co., and in what manner he became a creditor of the company.

135 (Objected to as irrelevant, improper, and inadmissible.)

Answer. When the company defendant purchased the Gold Hill mining estate of Amos Howes, the company gave certain acceptances to Howes in part payment for the property, one of these acceptances amounting to $1,000 in the shape of a draft on the company, dated on or about the 1st June, 1874, payable in four months; this draft was transferred by Howes to the said William A. Coit; at the time of the purchase of the said estate Coit held a second mortgage on said estate; in the terms for the purchase of the property it was agreed between the company and Coit that the said Coit should can-

cel the old mortgage which he held and take a new mortgage from the company on the said property, of equal force, to be paid in instalments, with interest; before the first instalment became due the president of the company, then Mr. Lloyd P. Smith, paid the interest in cash due on the mortgage and accepted a draft of $3,000 drawn by Coit on the 15th August, 1874, payable the 15th December, 1874; this draft was for the amount of the first instalment called for by the said mortgage; after the pecuniary embarrassments of the company Coit foreclosed this mortgage and included therein the first instalment, for which this last draft was given, and sold out all his right, title, and interest on said mortgage on or about the time of the sheriff's sale of the property; that sale took place August 28, 1875; he got $25,000 in cash, and he gave a deed conveying all his right, title, and interest in the property covered by the mortgage and the mortgage too.

Q. This $3,000 draft which was given for the first instalment of the Coit mortgage is the same draft which was reduced to judgment in the court of common pleas No. 1, March term, 1879, No. 228, on May 10, 1879, and which is part of plaintiff's claim in this case, is it not?

(Objected to as leading, and as irrelevant, incompetent, and inadmissible.)

A. To the above question I answer, "Yes."

Q. Did the debt of Mr. Coit, the plaintiff, accrue before the Misses Boggs and Mrs. Cram became shareholders in the N. C. G. A. Co.?

136 (Objected to as irrelevant, incompetent, and immaterial.)

A. The indebtedness for the $1,000 draft accrued after they became shareholders of the original stock, when the capital of the company was $100,000; also, the draft for $3,000 was accepted by the company after they became shareholders of the increased capital stock.

Q. What disposition was made of the $3,000 draft given by the Gold Company, defendant, to Coit, the plaintiff in this suit?

(Objected to as irrelevant, immaterial, and incompetent.)

A. The draft was given for the first instalment of the mortgage, and when he foreclosed the mortgage he included that instalment in the foreclosure and afterwards brought his suit against the company and obtained judgment including the same draft.

Q. To whom did Coit sell his interest in the mortgage held by him on the N. C. G. Co.'s property?

(Objected to as immaterial, irrelevant, and incompetent.)

A. To one Holmes, of Salisbury, North Carolina.

Q. Was there anything else included in that sale beside the interest in this mortgage?

(Objected to as irrelevant, immaterial, and incompetent.)

A. There was nothing included in the sale of the property of the mortgage covering the property, otherwise than what the mortgage called for, to my knowledge.

No cross-examination.

Adjourned until Friday, January 20th.

T. J. CRAM.

WILLIAMS CARTER, *Examiner.*

136½ COIT *vs.* GOLD CO.

Meeting before examiner, January 20th, at three o'clock.

Present: Messrs. Hoffman and Hart, Roney, Junkin, Bull, Farley, and Husband.

Mr. HENRY H. BARTON, sworn and examined by Mr. Junkin, says:

Question. You are one of the defendants in this case?

Answer. Yes. Mr. Christopher Bockius called on me one evening and said he was in trouble about $600, and said if he didn't raise the amount he would have the sheriff on him next day. He offered me as security five shares of this Gold Company's stock, representing it to be worth $120 a share. Not knowing anything about the matter—not expecting to get my money back—I told him I would buy the stock and give him the money, and I paid him $600 and he brought me the shares. Subsequently they demanded the shares of me, and I surrendered the shares, and I received in lieu thereof certificates for twenty shares of the watered stock, and I received the certificates therefor. Subsequently, on December 9, 1874, these certificates were surrendered, and I received in lieu thereof the two receipts, which I now produce, of that date, numbered 120 and 121 and marked "Exhibits Nos. 1 and 2, of January 20, 1882," signed by the president and secretary of the company, with its seal, which acknowledged the return of the twenty shares and that I was entitled to have a new — for one share for every share thus returned—that is, for five shares. I never applied for and never received the certificate for the five shares.

137 Q. What knowledge, if any, had you of the organization of this company, of the manner in which the stock was paid for, and had you been a subscriber for the stock?

A. I had no knowledge in regard to the organization of the company; I did not know how the stock had been paid for, and I was not a subscriber, and I supposed it was full-paid stock; I had nothing whatever to do with the formation or carrying on of the company.

Now, the whole of the above testimony was taken down with the understanding on the part of counsel subject to any and all objections which might be made by counsel representing the plaintiff, who, accordingly, object to the whole of it as irrelevant, immaterial, and improper.

H. H. BARTON.

B. K. JAMISON, sworn and examined by Mr. BULL:

I am a member of the firm of B. K. Jamison & Co; our firm is one of the defendants in this suit; I know there was such a company as the N. C. G. A. Co. formed, but I know nothing further about it; our firm had nothing to do with the organization of that company. We were not subscribers to the stock of the company, either individually or as a firm.

Question. The evidence in this case discloses the fact that certain shares of the stock of the company stand on the books thereof in the name of your firm; state what you know in regard to those shares.

Answer. If there is any of the stock standing in our name, or ever stood in our name, it belonged to George J. Richardson, and I think at one time he deposited a certificate with us as additional collateral on certain loans that we were carrying for his account, and my impression is we returned that stock to him; that is all I know about it.

We had no interest in the stock otherwise than I have stated.

Q. Do you hold any of that stock now?

A. Not that I am aware of.

138 Q. Have you had any interest in this stock since the commencement of the March term, 1879, which is the first Monday in March?

A. I never had any interest before or since that time further than I have stated.

(NOTE.—The whole of the above testimony by the last witness is objected to by counsel for plaintiffs as irrelevant, immaterial, and incompetent. The objection is made now as though made prior to its taking down, by agreement of counsel.)

Subject to the above objection, counsel for the plaintiff cross-examined as follows:

Q. Do you remember the amount of the loans due to you or your firm by Richardson, and for which you have testified that he assigned these shares of stock to you as additional collateral security?

A. I don't remember the exact amount, but at that time I think it was probably $12,000 or $15,000; it will be impossible to give the exact amount, because at that time there was a running account of loans, evidenced by notes, due bills, etc., which were paid off and renewed from time to time; there was no detailed account with Mr. Richardson in the books.

B. K. JAMISON.

WILLIAMS CARTER, *Examiner.*

Adjourned till January 27.

139 COIT *vs.* GOLD CO.

Meeting before examiner, January 27th, at three o'clock.
Present: Messrs. Hoffman and Hart, Farley, Roney, and Neilson.

JNO. R. HALL sworn (NEILSON):

I bought stock in this company some time in 1874. I bought it in open market and paid par and over par. I bought somewhere about June, 1874. I was not an original subscriber to the stock. I originally bought 5 shares, then 15, and altogether owned between 60 and 100 shares. I am not and never was indebted to the company for stock or otherwise.

(Objected to.)

I own no stock of the company now. I parted with my stock in 1875, I think. I am almost certain.

Cross-examination by Mr. HOFFMAN:

Question. Where did you purchase this stock in open market?
Answer. Of B. A. Mitchell and other parties; not of the company.
Q. Then you don't mean to say you bought this stock at the stock exchange?
A. No. I bought none at the stock exchange. I bought it as full-paid-up stock, mainly from individual holders; none from the company; the stock ledger will show from whom I bought it.

140 Re-examined:

I surrendered what stock I had at the time of the increase of stock and received the increased stock for it, each being a full equivalent for the other.
I have no interest in this company now, and have had none since 1875, I think.

JNO. R. HALL.

ALLEN MIDDLETON affirmed:

I am supposed to own some stock in the company; about 240 shares, I think. I became connected with the company when the company first started, and the stock ledger will show the amount of stock I then owned. I owned 60 shares then. I paid par for it.
At the time of the increase of the capital stock I surrendered, through Mr. Jos. G. Mitchell, my original stock, receiving the increased stock, and I surrendered all the increased stock in November, 1874, and received back (through Mr. Mitchell) the original 60 shares. For the original 60 shares I received 240 shares, which I returned to the company in November, 1874, and got 60 shares of the increased capital stock.
Q. So that now, instead of owning 60 shares when the capital stock of the company was $100,000, you now own 60 shares when the capital of the company is $1,000,000; in other words, your interest

was only one-tenth after the increased surrender of the capital stock of what it was before?

(Objected to.)

A. Yes.

I am not indebted to the company for subscription to stock or otherwise.

The company is indebted to me in over $1,000 borrowed money, cash.

Q. Did you agree to pay for the increased stock in any other way than by the surrender of the original certificates?

(Objected to as irrelevant, immaterial, and incompetent.)

A. No, sir.

141 Cross-examined:

Q. Do you mean to say you paid $6,000 in cash for your first 60 shares of the stock of this company?

A. Whatever my original subscription was I paid in notes—then paid the notes.

Q. Did you pay $100 in cash for each share?

A. Yes, sir.

(Objected to.)

Q. How much in cash and how much in notes did you pay for these 60 shares?

A. It was all paid in notes originally, and the notes paid, as they came due, by instalments.

Q. These notes were for $6,000?

A. They were divided into $1,000 notes. There were six of these notes originally at $1,000 each.

I paid these notes, principal and interest. This 60 shares was bought from the company, the president and treasurer, the heads of the family. Mr. J. G. Mitchell was the treasurer of the company, as well as the association, before incorporation.

ALLEN MIDDLETON.

Gen'l CRAM, called on behalf of A. G. Elliott and Jos. B. Mitchell, executors of Jos. G. Mitchell, deceased, being duly sworn, says:

Joseph G. Mitchell was one of the original association. When the company was organized under its charter he had subscribed for 100 shares of the stock of the company, when the capital was $106,000. He received that stock about the 16th or 17th February, 1874. After the purchase of the Gold Hill estate mining property the capital stock was increased to $1,000,000. In the meantime, prior to the increase, he had sold out all but 40 shares of the original stock.

Under the resolution of the stockholders, 11th May, 1874 (or the 20th or 21st May), he surrendered those 40 shares and received 160 shares of the new stock for the surrender or cancellation of his 40 shares of the old stock.

142 He did not subscribe for any of the new stock; neither did he agree to pay for it, except by the surrender of the old.

(Objected to.)

That surrender and cancellation took place.

Under the arrangement made with the ore-dressing company that brought a suit for title to the Gold Hill estate he surrendered all the new stock which he then held and took back a receipt for one share for every four thus surrendered.

(Objected to as immaterial and irrelevant.)

This surrender took place on November 5, 1874, or a day or two afterwards.

Question. Please state whether J. G. Mitchell is indebted to-day to the company for subscription to stock or on any other account.

(Objected to.)

Answer. He is not so indebted.

Q. Please state whether the company is indebted to him; and, if so, to what amount

(Objected to.)

A. On the 1st June, 1879, the principal of the debt the company owes him was $8,332. The interest up to that date was $1,853. The company still owes these amounts, with interest on principal since then to this date.

Q. Were all the accounts of the company audited by an auditing committee at that time and the amounts ascertained up to that date?

(Objected to.)

A. Yes. This audit was accepted and approved by a board of directors at a meeting duly organized.

No cross-examination.

T. J. CRAM.

WILLIAMS CARTER, *Examiner.*

143 COIT *vs.* GOLD CO.

Meeting before examiner, February 3, at three o'clock.

Present: Messrs. Hoffman, Hart, Farley, Roney, and Husband.

Mr. Smith was to have had the day for the examination of his witnesses, but not appearing and there being no one present and ready to go on, there was no evidence taken.

Mr. Husband declares for himself and Mr. Neilson that they have closed their testimony.

Adjourned till February 10.

144 COIT *vs.* GOLD CO.

Meeting before examiners, February 10, at three o'clock.

Present: Messrs. Hoffman, W. H. Smith, and Roney.

M. H. COBB sworn, and examined by Mr. Smith:

I am defendant in this bill.

Question. Were you ever a stockholder in the N. C. G. A. Co., and if so, under what circumstances you became one?

Answer. I owned three shares, purchased in open market in May, 1874, I think.

Q. From whom did you purchase and what price did you pay, and what were the circumstances attendant upon their delivery to you?

A. I purchased them from Dr. J. D. Mitchell; paid $110 for each share, and paid the money to Dr. J. D. Mitchell; I understand it was full-paid-up stock.

I was furnished with a copy of the charter and my attention was directed to the clause limiting the liability of the stockholder. The clause was section 4, page 34, of the charter, January 30, 1874.

Q. Do you remember the par value of the stock?

A. $100, and I paid $110.

Q. What had you to do with the company at the original organization of the company or previous to the purchase of this stock, and if anything?

A. Nothing whatever.

145 Q. What did you do with the stock that you purchased?

A. I returned it to William F. Mitchell, secretary of the company, in June, 1874, under a resolution of the company.

Q. Have you that or any other stock of the company at the present time?

A. Neither that nor any other.

Q. Did you ever receive any dividends upon that stock?

A. I never received any dividends upon that stock.

Q. Do you now, or did you ever, owe the company defendant anything?

(Objected to.)

A. Never, to my knowledge.

Q. What other transactions or purchases of stock did you ever have with the company defendant, if any?

A. I never purchased any other stock. When I delivered the three shares to the secretary he gave me what I supposed to be a receipt entitling me to an increased number of shares under a new organization.

That receipt or paper I surrendered about the 1st of November, 1874, and received in lieu thereof a receipt entitling me to the return of my original three shares of stock, which shares I have never received—never applied for. I hold the receipt entitling me to them.

Q. Do you know whether or not the stock was owned by Doctor Mitchell or any one other than the company, or whether it came directly from the company, or whether Dr. Mitchell was an officer of the company?

(Objected to.)

A. I supposed Doctor Mitchell to be a *bona fide* owner of the shares. I understood him to say that the company had no stock to sell. I don't know that he was an officer of the company.

146 Cross-examined by Mr. HOFFMAN:

Q. You say you bought the three shares of stock from Doctor Mitchell?

A. I bought it at private sale; not by public outcry.

Q. When you used the expression "in open market," you did not mean that the stock was put up for public sale?

A. No, sir; I did not.

Q. You said you were informed that this was full-paid stock; were you told whether it was paid for in property or cash?

(Objected to as immaterial.)

A. I was not informed.

Q. I understand that you bought it as the stock of Mr. J. D. Mitchell; is that so?

A. I did.

Q. Did you pay for it in cash or property?

A. Cash.

Q. What representations were made to you, if any, that induced you to pay ten per cent. above the par value for the stock?

(Objected to.)

A. It was represented to me as a good thing.

Q. For what reason was it represented to you as a good thing?

(Objected to.)

A. Chiefly on account of the value of the Crosby process for amalgamating ores, and the monopoly the company would enjoy at Gold Hill, and Doctor Mitchell was a personal friend.

M. H. COBB.

147 COIT *vs.* GOLD CO.

Meeting before examiner, February 17, at three o'clock.
Present: Messrs. Hoffman and Hart, and L. R. Fletcher.

B. A. MITCHELL sworn (FLETCHER):

I am one of the defendants to the bill; in the year 1873, myself, I. G. Mitchell, and A. B. Crosby were engaged in a mining operation on a gold property in Spottsylvania county, Virginia, and interested in developing a patent process at that mine for working gold, called the Crosby process; at this mine we had a mill completed for working these ores, and a large amount of machinery in it.

Some time in the early fall of that year we were approached by Mr. Amos Howes, of Gold Hill, North Carolina, the owner or supposed owner of that property, to this effect: That he had heard of this process and desired to have some of his ores, or tailings of his ores, practically worked at our mill. He did send from North Car-

olina to this mill a quantity of his tailings, which were worked through the mill to his entire satisfaction; he came personally to the mill to see its working.

He was so pleased as to the results, saying repeatedly that they came up to our statement of the working of the mill; he was
148 so pleased that he desired that the works under this process should be erected at Gold Hill, for the working of Gold Hill ore, and desired to enter into arrangements for the working of his ores at Gold Hill.

I proceeded to Gold Hill with Mr. Crosby; I think in the month of September, 1873. I entered into a proposition and contract on behalf of my associates and myself with Mr. Howes, which contract, I believe, is in evidence.

Myself and associates had entered into an association with the same name as the subsequent incorporation, and by which I. G. Mitchell, A. B. Crosby, and myself agreed to sell that mill property in Virginia for $30,000 of stock of the company when incorporated. Loans of money were made by individuals and some $14,000 or $15,000 were raised, and all that mass of machinery in Virginia, about eighty tons, was taken and freighted to Gold Hill, North Carolina, and placed in the new building which we had erected at Gold Hill under the contract with Mr. Howes. Meanwhile, I prepared the charter, which I got passed by the Legislature of North Carolina the 30th of January, 1874.

In February, 1874, a meeting of the association and parties interested was held in Philadelphia, and all the personal property, the lease with Howes, the contract, etc., was regularly transferred over to the incorporated company, of which John Hulme became the president.

The mill was completed in the month of March, and the president, Mr. Hulme, General Cram, and myself, at our personal expense, went to North Carolina as a committee of the company to see and examine the mill.

Mr. Hulme died on the 20th of April, 1874, and J. D. Mitchell was elected president and subsequently Mr. Smith.

The capital of the company at this time was $100,000. Negotiations were entered into with Mr. Howes, the owner of the Gold Hill property, for its purchase, which estate was heavily in debt, there being mortgages to the amount of $47,000 or $48,000 and individual indebtedness to the amount of $35,000—

149 The stockholders having the right under the charter to increase the capital stock of the company from $100,000 to $1,000,000, which they did, and had the further right to increase it to $2,500,000. Of this amount of $1,000,000 capital, $200,000 was paid Amos Howes for his title, for which he executed a deed in the early part of June, 1874, under a contract which I prepared, signed by the company and Mr. Howes in the latter part of May, 1874.

Under that contract and arrangement the stockholders of the original $100,000 received $400,000 of the $1,000,000, and the remaining $400,000 was placed in the treasury of the company. This arrangement for the purchase of the property was entered into by

reason that at that time the company had reasonable expectations that $150,000 would be raised by sale of a portion of its working capital, whereby the indebtedness against the Gold Hill estate would have been entirely paid, and a large cash working capital would have been left in the treasury. There was no indebtedness, as far as I remember, against the mill company, working under its contract with Howes.

There were difficulties in the title connected with Gold Hill, and I proceeded to North Carolina with powers of attorney from the company, I being a member of this bar, and the titles were finally gotten in unexpected into our company, so far as we could then ascertain. These were subsequently claims set up by a company in New York, called "The Ore-Dressing Company," which never amounted to anything.

Our company being unable to pay the mortgage indebtedness, the property, in the fall of 1875, was sold out from the company under these mortgages. In the early part of the fall of 1874 I had retired from all active participation in the affairs of the company, and had sold, previous to the increase of the capital stock, the greater part of my original shares in the company, leaving me 25 original shares. These 25 being increased to 100, I sold 80 of the 100, leaving five of the original shares when I surrendered the 20 to the company.

The company was and is indebted to me for cash loans and for my services to the company, whereby I am a creditor of the company of some $5,000 or $6,000, and so acknowledged by the company.

Q. Were you familiar with the assets of the company at the time of the assignment from the association to the chartered company?

A. I was.

Q. What did they consist of, generally?

A. Of all the machinery taken from Virginia and placed at Gold Hill, which were engines, boilers, shafting, crushing and pulverizing machinery, amalgamating machinery, and, in addition, at Gold Hill much additional of the same kind, with two large revolving furnaces with accompanying machinery for roasting ores; large additional amalgamating tubs and machinery, and also works for extracting copper from the ore, with a complete assay department, costing a large amount—I think $2,000—the lease and contract with Howes, charter, money on hand—$14,000 or $15,000—and a great many other things which I can't remember.

Q. Can you tell the valuation of all this?

A. At the meeting of the incorporators in February each individual valued for himself. It was then averaged and the average valuation was $137,000, I think, but by mutual consent it was placed at the capital stock of the company—$100,000.

Q. What were the conditions under which the $400,000 of the increased stock were received by the stockholders?

A. The surrender of their shares and getting three additional—or four—shares in place of their original one.

Q. How was the increased stock to be paid for?

A. By the purchase of this very valuable gold estate, which was a bargain at the price.

151 Q. Was the new stock subscribed for by the stockholders?

A. No, sir.

Q. What became of this stock in excess of this $100,000?

A. $400,000 was put into the treasury to be sold to pay the debt against Gold Hill, assumed by the company, $200,000 paid to Amos Howes, and $300,000 to the old stockholders.

Q. What became of this $900,000 of stock?

A. Subsequently, in November, 1874, the stockholders holding the $400,000 turned back to the company the additional three shares which they had received. Thus they are ten times worse off than before, and the remaining $600,000 in the company, as follows, namely, $400,000 in the treasury, Mr. Howes' $200,000, which he was paid for the property, by a subsequent arrangement got back into the company by General Cram and others for the company. Thus $900,000 of the $1,000,000 is in the company's treasury.

Q. On whose judgment was this property sold?

A. It was sold under a mortgage of some $25,000 held and owned by or made to William A. Coit, which was the third mortgage against the property.

Q. Have you any knowledge as to whether or not any portion of the indebtedness as claimed on this judgment was included in that mortgage?

A. $3,000, I think.

Q. How long have you been acquainted with Mr. Coit?

A. I have known Mr. Coit since the spring of 1874. I can't say that I'm acquainted.

Mr. Fletcher waives any objection to Mr. Hart's making any objection to the foregoing testimony. Accordingly Mr. Hart now objects to the whole of the foregoing testimony as given by Mr. Mitchell as irrelevant, immaterial, and incompetent.

Adjourned until February 24, 1882.

152 Meeting February 24th.

Present: Messrs. Hart and Hoffman, Fletcher, Roney.

Continuation of the examination of B. A. Mitchell.

Question. Can you tell me the amount the company owed you at the time your connection with it ceased?

(Objected to.)

Answer. They owed me $4,000 principal, with some interest on that amount, now amounting to over $5,000.

Q. From what time to what time was that amount accruing?

(Objected to.)

A. I lent them $1,000 in the spring of 1874 and in August, 1874, they approved my bill for services of $3,000, with interest on both amounts since then.

Q. What was the property on which the new stock of $1,000,000 was based?

A. Upon the purchased property of Gold Hill estate, which consisted of 800 acres, a mansion house, and a large number of dwellings, a whole village and a large well with its engines and extracting works and pumping-engines, and also the new mill which we had erected and all its works.

Q. Was or was not the Gold Hill property put in with all the other property of the company—that is, uniting the entire assets?

A. It was; they were united.

Q. What was the valuation put upon Gold Hill and the other assets of the company by the directors?

(Objected to.)

A. At $1,000,000.

Q. Did you ever have any conversation with Mr. Howes or Mr. Coit with regard to the valuation put upon this property by the directors?

(Objected to.)

A. I don't remember any conversation with Mr. Coit, but with Mr. Howes many conversations. The value of the property
153 was discussed both at Gold Hill and at our office here in Philadelphia. Mr. Howes valued the property very high and consented to our valuation of $1,000,000.

Q. In Mr. Howes' testimony he places a valuation—" Item 2, Exhibit B," at $7,500.

(Exhibit shown witness.)

What is your valuation of it, and what did it cost?

(Objected to.)

A. That mill in Virginia, complete, cost myself and associates $20,000.

Q. What was your valuation of " Item 5, Exhibit B?"

(Objected to.)

The new mill at Gold Hill complete?

A. $40,000 would be my valuation, and I would not undertake to put it there to-day for that amount. There were two engines, I think, of about sixty horse-power each, in the mill.

B. A. MITCHELL.

Mr. Fletcher closes.

Adjourned till Friday, March 3d.

WILLIAMS CARTER, *Examiner.*

Meeting before examiner March 3d.

Adjourned till March 10th.

March 10th.—Present: Messrs. Hoffman and Hart and General Cram.

Note from Mr. Fletcher, who was to have concluded his testimony at this meeting, saying that owing to the absence of his witness, Mitchell, in Baltimore, he could not attend.

Note from Mr. Husband that he could not attend owing to the absence of his colleague, but that he would positively go on or conclude Friday, March 17th.

Meeting adjourned till Friday, March 17.

WILLIAMS CARTER, *Examiner.*

March 17th.—Mr. Fletcher unable to attend, and Mr. Husband closes.

Adjourned till March 24th.

March 24th.—Present: Messrs. Roney, Hart, Fletcher, and Farley.

Mr. B. A. MITCHELL recalled.

Question. What knowledge had Mr. Coit of the shifting and change of the stock as to values, etc.?

(Objected to by Mr. Hart.)

155 Answer. I was first introduced in 1873 to Mr. Coit at Gold Hill, and my knowledge and acquaintance with Mr. Coit since then consists in personal interviews with him in New York, Philadelphia, and North Carolina numbers of times, all in relation to our company in connection with the Gold Hill property.

Mr. Coit was perfectly familiar with the original formation of the company, and with the increase of the stock of the company to one million dollars, was a party to it, and the company could not and would not have purchased the Gold Hill property and increased its stock without his concurrence and consent, which was in this wise:

Mr. Coit held a third mortgage through a trustee, who was his son, against that property for over twenty-seven thousand dollars, given to the trustee for him by Amos Howes, the then owner or supposed owner of that property. This was given in the year 1873. When our company entered into this agreement with Mr. Howes in May, 1874 (which agreement is in evidence), to purchase the Gold Hill property, in the way and manner I have before stated, part of that negotiation and agreement was for the purpose for getting in the titles to the company that, under the first mortgage, a sale of the property should be made, and that mortgages of like amount should be given to the respective parties holding the mortgages for their several and respective amounts, and in their several respective positions and priorities. To carry that into effect, agreements were entered into between the company and the Messrs. Holmes, and with Mr. Coit, the plaintiff. Mr. Coit, both personally and through his accredited agent and counsel, Mr. Bradford, was made acquainted with the designs, purposes, and intentions of the company in the purchase of that property. An agreement with him by the company to the effect that he was to be placed, after his original mortgage was satisfied, in the same position by the company. Accordingly Mr. Coit made a deed to the company of all his interest and rights under that mortgage

156 to the company, the trustee joining in it, in which deed was recited his agreement with the company, and the company gave him, at the same time, its mortgage, which not only embraced

the Gold Hill property, but also the new mill property and works of the company, other property, and the Mansion House which they had acquired under their purchase from Howes. This new mortgage was dated in the month of July, 1874, and was payable in installments; the first installment, being $3,000, became payable in September, 1874. Mr. Coit, also, in addition to his mortgage, received from the company an accepted draft for $1,000, made by Amos Howes on the company. When that installment became due the company was unable to pay it, and he took from the company its draft for the amount, payable in four months, which became due the next December, but the president of the company, for the company, paid Mr. Coit in cash $553.81, being the interest upon the mortgage. Mr. Coit sold the property under that mortgage, in the year 1875, to the — Holmes, for $25,000, in cash and notes. Four years afterwards Mr. Coit sued this company for that installment and his $1,000 draft, and obtained judgment for over $5,000 in our court of common pleas No. 1, and for that judgment this present suit is brought.

Q. What knowledge had Mr. Coit of that property, its location, and its advantages?

(Objected to.)

A. Mr. Coit I met at Gold Hill in 1874. He had his son residing there as his representative, and had been, from his statements to me, interested with Mr. Howes in the working of the Gold Hill property for several years previous to my acquaintance with him or Mr. Howes, and had also a Mr. Noble there as superintendent, representing him in the working of the mines. Mr. Coit expressed himself to me that the property, in his estimation, was exceedingly valuable,
and Mr. Howes, in a written proposition made to me, valued
157 the property at $500,000 (objected to), and he also valued the patent at $500,000.

(Paper called "Proposition," dated April 20, 1873, and signed Amos Howes, shown witness. Paper objected to as inadmissible.)

Q. Where did you get that paper?

(Objected to.)

A. This paper I received from Amos Howes at the time of my first visit to Gold Hill.

Q. In whose handwriting is it?

A. My handwriting; and signed by Amos Howes; received the day of its date. (Paper offered in evidence, marked "Exhibit Mitchell H.") (Objected to.) This paper contains three propositions from Mr. Howes. This I submitted to my associates on my return to this city. The second proposition was finally accepted, and an agreement entered into between myself, representing my associates and myself, with Mr. Howes was executed, which agreement is in evidence, marked "Exhibit —." Subsequently, in accordance with that agreement, we erected our mill and works, as I have before stated.

Mr. Fletcher offers in evidence pp. 48 to 52 of the minute book

of the N. C. G. A. Co., showing the agreement of Coit and the company.

(Objected to.)

Mr. Fletcher further offers deed of Amos Howes and wife to Francklyn Coit, trustee, for this property; copy certified from the record, marked "Exhibit Mitchell B."

(Objected to.)

Also the original deed from Coit to the Gold Company, duly recorded, dated July 10, 1874, marked "Exhibit Mitchell C."

(Objected to.)

Mr. B. A. Mitchell says that the signature of the deed is Mr. Coit's.

158 Also certified copy of mortgage from Gold Co. to Coit, dated July 10, 1874, marked "Exhibit Mitchell D."

(Objected to.)

Also certified copy of deed from Coit to M. L. and R. I. Holmes, dated August 28, 1875, marked "Exhibit Mitchell E."

(Objected to.)

Mr. Hart objects to the whole of the testimony given by Mr. Mitchell as immaterial, irrelevant, and inadmissible.

B. A. MITCHELL.

Mr. Fletcher closes.

WILLIAMS CARTER, *Examiner.*

159 The following testimony was offered on behalf of the plaintiff:

(*Extract from Minute Book of North Carolina Gold Amalgamating Company, Defendant, Page* 7.)

PHILADELPHIA, PA., *Feb.* 13*th*, 1874.

Meeting of the corporators as a board of directors.

A meeting of the corporators acting as a board of directors, as prescribed by the charter, was held immediately after the adjournment of the first meeting of corporators. Gen'l T. J. Cram was called to the chair and J. G. Mitchell acted as secretary.

On motion, it was resolved, That the capital stock of the company shall be one hundred thousand dollars ($100,000), divided into shares of $100 each (one hundred dollars), until further ordered.

On motion, it was resolved, That subscription books be opened for the sale of the capital stock, under the provisions of the charter, and when a majority of the stock is subscribed and the assignment of each subscriber made of all their right, title, and interest in the association known formerly as the North Carolina Gold Amalgating Company, then this company as chartered by the Legislature of North Carolina shall receive at par in payment for such sub-

160 scription, and any others subsequently made under the same conditions, the certificates issued by said association formerly known as the North Carolina Gold Amalgamating Company.

Extract from Said Minute Book, Page 35.

PHILADELPHIA, *May 11th*, 1874.

Pursuant to notice sent each stockholder, a meeting was held at the office of the company this day at 12 o'clock, Vice-President T. J. Cram in the chair, W. F. Mitchell, secretary. The vice-president made a short statement of the objects of the meeting, and, on motion of Dr. J. D. Mitchell, the following resolution was offered:

"Resolved, That the board of directors be, and they hereby are, authorized to increase the capital stock of the company to $1,000,000, in 10,000 shares of $100 each, whenever, in their judgment, they deem it for the best interest of the company so to do. And they are hereby further authorized to use as much of the said capital stock as may be necessary (not exceeding 5,000 shares of the same)
161 for the purchase or lease of the Gold Hill mining estate, or for the purchase or lease of such other property as they may deem best for the interests of the company."

After thorough discussion of the above resolution, the same was put on its passage. The vice-president appointed B. A. Mitchell and B. H. Jenks as tellers, the following stock being represented and voting on the question:

A. Middleton, Jr., by C. Bockius, att'y	60	shares.
A. E. Hall, by J. R. Hall, att'y	45	"
J. R. Hall	15	"
B. H. Jenks	50	"
M. E. Taylor, by C. Bockius, att'y	20	"
Thos. H. Neilson	20	"
M. A. Neilson, by T. H. Neilson, att'y	15	"
C. Bockius	20	"
F. Allen	25	"
E. L. Bockius, by C. Bockius, att'y	5	"
S. K. Ashton, by B. A. Mitchell, att'y	25	"
T. J. Cram	40	"
J. F. Calkins, by J. D. Mitchell, att'y	5	"
M. H. Cobb, " "	3	"
L. P. Smith	45	"
C. Boggs, by T. J. Cram, att'y	3	"
V. Boggs, " "	3	"
E. Boggs, " "	8	"
Mrs. T. J. Cram	1	"
B. A. Mitchell	45	"
J. G. Mitchell	40	"
" ex. est. J. B. Mitchell, deceased	65	"
J. D. Mitchell	25	"
A. F. Porter	10	"
R. C. Simpson, by J. D. Mitchell, att'y	8	"
U. S. G. & S. A. C. of Va., by B. A. M., att'y	154	"
W. F. Mitchell	30	"
A. B. Crosby, by J. G. Mitchell, att'y	80	"
J. J. Smith, by L. P. Smith, att'y	10	"
Total number shares voted	870	shares.

870 shares of stock were voted, and the above resolution was unanimously carried.

On motion, adjourned.

WM. F. MITCHELL, *Sec'y.*

162 *Extract from Said Minute Book; Page* 38.

PHILADELPHIA, *May 20th*, 1874.

Whereas at a meeting of the stockholders of the company legally convened on the 11th of May it was voted by 870 shares out of the 1,000 shares of stock of the company (being a unanimous vote of all the stock represented at the meeting) that the directors of the company be authorized to increase the capital stock to one million of dollars in 10,000 shares of $100 each; and

Whereas the executive committee have reported to the board a contract with Mr. Amos Howes for the purchase of the Gold Hill mining estate, which report has been accepted and adopted by the board; and

Whereas the carrying out of that contract renders necessary the increase of the capital stock of the company: Therefore be it

Resolved, That by virtue of the authority of the charter of the company and the authority given to the board by the vote of the shareholders it be, and it hereby is, ordered that the capital stock of the North Carolina Gold Amalgamating Company be increased from 1,000 shares, representing $100,000, to 10,000 shares, representing one million of dollars.

163 Resolved, That a stock dividend of three thousand shares of this new stock be, and hereby is, declared upon the one thousand shares already issued by this company, thus giving four in the increased capital stock in lieu of each share now held by present shareholders.

Resolved, That the secretary be directed to send to each holder of share or shares in the original stock of the company a circular letter stating the action of the board as embodied in the foregoing resolution, and notifying such stockholders that upon the surrender of the present certificates of stock new certificates will be issued for 4 shares, in lieu of each share represented in the surrendered certificate, said circular to be sent only after approval of the executive committee.

Resolved, That the secretary be directed to procure new certificates, to be issued in lieu of certificates to be surrendered, and that the proper officers of the company be, and hereby are, authorized to sign and issue the certificates of stock called for in the distribution of this stock dividend.

164 EXHIBIT "A."

PHILADELPHIA, *Feb. 13th*, 1874.

For and in consideration of an equal amount of stock in The North Carolina Gold Amalgamating Company recently chartered by the Legislature of North Carolina, we, the undersigned, do here-

by assign, transfer, and set over unto the said "The North Carolina Gold Amalgamating Company" all our right, title, and interest in the stock of "The North Carolina Gold Amalgamating Company," organized by us as an association, together with all our right, title, and interest in any and all property and machinery belonging to the said association, which is hereby dissolved.

Observe: Hulme and Cram were not members of the association, but signed this as expressive of their intentions of assigning (all interest they have acquired in personal property they have acquired by furnishing money to the treasurer of the association) to the North Carolina Gold Amalgamating Co. under the charter in consideration of stock to be received by them from the chartered company.

A. B. CROSBY.
J. G. MITCHELL.
A. B. CROSBY,
By J. G. MITCHELL, *Att'y.*
B. A. MITCHELL,
On behalf of U. S. G. A. Co. of Va.
B. A. MITCHELL.
J. HULME.
T. J. CRAM.
C. BOCKIUS.
M. E. TAYLOR,
P'r C. BOCKIUS, *As Att'y.*

Witnessed by—
J. G. MITCHELL.
THOMAS H. NEILSON.
ALLEN MIDDLETON, JR.
MARTIN LANDENBERGER.
BARTON H. JENKS.

165 EXHIBIT "B."

Cash Valuation of Properties Assigned to Company,

Each director making his own figures independently and handing them in without consultation with each other.

First property—Patent right for working on the ore in Gold Hill mine.
Second " —Machinery, equipments, fixings of Old Dominion mill, Va.
Third " —Lease mill site for ten years; 8 acres at Gold Hill mine, N. C.
Fourth " —Contract for furnishing ores to new mill at Gold Hill, 20 tons per day.
Fifth " —New mill, well on to completion.
Sixth " —Franchises conferred by charter.

			Totals.
J. Hulm's,	1	$30,000	
	2	12,000	
	3	500	
	4	40,000	
	5	9,500	
	6	50,000	
			142,000
J. G. Mitchell's,	1	30,000	
	2	15,000	
	3	500	
	4	40,000	
	5	12,000	
	6	40,000	
			137,500
B. A. Mitchell's,	1	30,000	
	2	15,000	
	3	1,000	
	4	30,000	
	5	10,000	
	6	45,000	
			131,000
166			
Lloyd P. Smith's,	1	30,000	
	2	15,000	
	3	31,000	
	4	50,000	
	5	13,000	
	6	30,000	
			139,000
T. J. Cram's,	1	30,000	
	2	15,000	
	3	1,000	
	4	30,000	
	5	12,000	
	6	50,000	
			138,000
			5) 687,500
			137,500 average.

On free discussion it was finally agreed to reduce the valuation, inasmuch as it was to be capitalized into stock, to $100,000, the minimum limit of the charter, or 1,000 shares of $100 each.

See p. 4 of the minute-book.

167 *Extract from Docket of Court of Common Pleas No.* 1 *for the County of Philadelphia, of March Term,* 1879. *No.* 228.

WILLIAM A. COIT

vs.

THE NORTH CAROLINA GOLD AMALGAMATING COMPANY.

April, 4th, '79.—Copy of drafts filed.	
April 24, '79.—Affidavit of defence filed.	
May 8th, '79.—Supplementary aff't of defence filed.	
May 28, '79.—Att. sur. judg't *vs.* Thomas J. Crane and Graham Elliot, exit ret. 1st Mon. June, 1879. Attached as commanded, summoned garnishees and *nihil habet* as to def't.	Sum's case.
May 31, 79.—Plea of A. G. Elliot, garnishee, filed.	Exit March 31, '79.
June 9, '79.—Rule to take depositions of Lloyd P. Smith, Esq., filed.	
June 20, '79.—Rule to show cause why Lloyd P. Smith, Esq., should not be compelled to testify in the above case under rule taken pursuant to rule of court *vs.* 48.	Returnable 1 Mon. April, '79. Served.
June 26, '79.—Rule to show cause why judgment should not be entered against Thomas J. Crane, garnishee, on his answers to interrogatories filed.	April 29, '79.—Rule for judg't for want of sufficient aff. of defence.
June 28, '79.—Rule withdrawn.	
June 26, '79.—Answer of Thomas J. Crane filed.	
July 3, '79.—Answer of A. Graham Elliot filed.	May 10, '79.—Rule absolute.
March 24, '80.—Rule on garnishee to plead filed.	
March 30, '80.—Plea of Crane, garnishee, filed. This attachment is discontinued as to both garnishees.	May 10, '79.—Damages assessed at $5,489.82.

E. F. HOFFMAN,
Att'y for Plaintiff.

Attest: JAS. W. FLETCHER, *For Proth'y.*

Dec. 24, '80.

168 *Copy of Certificate Issued to B. K. Jamison & Co. (Certificate Stock Book No. 1.)*

North Carolina Gold Amalgamating Company, at the Gold Hill mine, N. Carolina.

(No. 78.) (Shares, 40.)

Capital, $100,000. Shares, $100 each.

This is to certify that B. K. Jamison & Co. are entitled to forty shares in the capital stock of the North Carolina Gold Amalgamating Company, transferable only on the books of the said company in person or by attorney upon surrender of this certificate.

In witness whereof we have hereunto set our hands and affixed the seal of the company, at Philadelphia, this twelfth day of May, A. D. 1874.

[SEAL.] WM. F. MITCHELL, *Sec'y.*
T. J. CRAM, *Pres't.*

169 *Copy of Certificate Issued to B. K. Jamison & Co. (Certificate Stock Book No. 2.)*

North Carolina Gold Amalgamating Company, at the Gold Hill mine, N. Carolina.

No. 79. Shares, 160.

Capital, $1,000,000. Shares, $100 each.

This to certify that B. K. Jamison & Co. are entitled to one hundred and sixty shares in the capital stock of North Carolina Gold Amalgamating Company, transferable only on the books of the said company in person or by attorney upon surrender of this certificate.

In witness whereof we have hereunto set our hands and affixed the seal of the company, at Philadelphia, this seventeenth day of June, A. D. 1874.

[SEAL.] WM. F. MITCHELL, *Sec'y.*
T. J. CRAM, *Pres't.*

170 *Extract from Minute Book, Page* 204, '5.

PHILADELPHIA, 12 (2nd FRIDAY), *March*, 1880.

The board of directors this day met.

Present: T. J. Cram, Lloyd P. Smith, Thos. H. Neilson, Marmaduke Moore.

The minutes of the last meeting were read and approved.

Whereas a letter, of which the following is a copy, has been put before the board by the president:

OFFICE OF GEORGE BIDDLE, No. 208 S. 5TH ST.,
PHILA., *Feb. 25th*, 1880.

DEAR SIR: Please advise me whether the North Carolina Gold Amalgamating Co. has any objections to our commencing suit in its name:

1. Against yourself, T. J. Cram, and Mr. Smith for the amounts

alleged to be due from you to the company by reason of stock obtained by you, but for which the subscription price was not paid, &c.

2. Against other persons than yourself and Mr. Smith, whom we believe to be similarly situated.

As already stated to your counsel I desire to have an explicit answer in order to found thereon, if permission is refused, a bill in equity in which the company will be made defendants.

171 I address you of course as president and a director of the company.

Please oblige by an early answer.

Respectfully yours,

(Signed) GEORGE BIDDLE.
" E. F. HOFFMAN.

Thos. J. Cram, Esq.

Whereupon, after due consideration, the following preamble and resolution was moved and seconded and unanimously adopted:

Whereas by a letter dated Feb. 25th (or 28th), 1880, from George Biddle and E. F. Hoffman, attorneys for Hoffman (formerly of the firm of Potter and Hoffman), asking permission to bring suits in the name of the company *vs.* certain individual stockholders with a view of making them pay a debt due by the said company to said Hoffman on the alleged ground that said stockholders owe the company certain stock alleged by said Biddle and Hoffman to have been subscribed and unpaid for;

And whereas the board of directors are ignorant of any stockholders being on the ground alleged above indebted to the company;

And whereas the board of directors doubt their right to give the consent thus asked and believe said right to belong to the stockholders: Therefore, be it

172 Resolved, That this board will place the said letter from Messrs. Biddle and Hoffman before the stockholders for their action at their next meeting.

Resolved, That the secretary send a copy of these resolutions to Messrs. B. & H., attorneys, as an answer to their letter.

There being no further business before the board, it adjourned.

Extract from Minute Book, Page 209.

The following preamble and resolution were adopted:

Whereas on the 25th Feb., 1880 (see page 205 minute book), George Biddle and E. F. Hoffman, attorneys of certain parties, asked of the pres't of the company consent for them, the said attorneys, to bring "suits in the name of the company *vs.* certain individual stockholders" (not named), other than T. J. Cram and Lloyd P. Smith, on the alleged ground of said stockholders owing the company for certain alleged unpaid stock alleged to have been

173 subscribed for—said letter being recorded on p. 204 of the minute book;

And whereas the board of directors *on* their next meeting,

12 March, 1880, resolved, on due consideration of the matter, that they doubted the right of the board to grant any such permission, but that the board would lay the matter before the stockholders at their next annual meeting (which is the meeting of to-day):

And whereas information to this effect was transmitted on the said 12th March, 1880, to said attorneys:

Now, it is resolved, That the reply of the directors to said letter of Biddle & Hoffman, attorneys, is hereby approved, and the stockholders refuse permission on their part of any one to bring suit against the stockholders individually.

Resolved, That the secretary of this meeting be requested to acquaint said attorneys (at the office of Mr. Biddle, 208 S. 5th St.), in substance of this action of the stockholders.

There being no further business for the meeting to act upon, the meeting adjourned *sine die*.

174 The following testimony was offered on behalf of the North Carolina Gold Amalgamating Company, defendant:

DEF'T'S EXHIBIT "A."

An act to incorporate the "North Carolina Gold Amalgamating Company."

SECTION I. The General Assembly of North Carolina do enact: That T. J. Cram, B. Arthur Mitchell, Augustine B. Crosby, Joseph G. Mitchell, Lloyd P. Smith, and their associates, successors, and assigns, or any three of them, be and they are hereby created and made a body politic and corporate by the name, style, and title of "The North Carolina Gold Amalgamating Company," and by such name and title shall have continual succession for the purpose of working, mining, milling, purchasing, manufacturing, smelting, assaying, reducing, or otherwise treating ores, earths, minerals, and metals, and for building, erecting, and owning machinery and fixtures for any of said purposes, or for sale, barter, or exchange, and for holding, owning, leasing, mortgaging, or selling such real or personal estate as may be necessary in connection with the other privileges herein granted, and to erect houses, mills, and other buildings upon and otherwise improve any lands leased or held by
175 them, and for making, buying, and selling such matters and things as appertain to their business, and shall be capable of suing and being sued, impleading and being impleaded, and of having and using a common or corporate seal, and the same to alter and change at pleasure, and of granting and receiving, in its corporate capacity and name, property, real, personal, and mixed.

SECTION II. The minimum capital stock shall be one hundred thousand dollars; shall be divided into shares of not less than one hundred dollars each, with power to increase the capital stock from time to time, by a majority vote of the stockholders, to a sum not exceeding two million and one-half ($2\frac{1}{2}$ —) dollars.

SECTION III. The principal office of the company shall be at Gold Hill, Rowan county, with such branch offices, located wherever they

may deem proper, as may be necessary for the transaction of the business of the company, and the affairs of the company shall be managed by a board of directors, of such number as the stockholders may select and choose, a quorum of whom may be such number as the stockholders may name; but, for the purpose of organization, the corporators herein named shall constitute the board of directors and shall hold office until their successors are elected and qualified.

The officers of the company shall be a president and such
176 other officers as the board of directors shall name, and all offices, except president, may be abolished or combined by a majority vote of the stockholders.

SECTION IV. The subscription to the capital stock of said company shall and may be paid in such instalments, in such manner, and in such property, real or personal, as a majority of the corporators herein named may determine, but the stockholders of this company shall not be liable for any loss or damage or responsibility beyond the assets of the said company; and the said company may make, alter, repeal, or amend such by-laws and regulations covering all points of organization and business not herein specifically provided for as they may deem necessary and proper: Provided, The same are not inconsistent with the Constitution of the United States or of the State or the provisions of this act.

SECTION V. The said company may issue certificates of stock in such form and subject to such regulations as they may from time to time prescribe, with power also to issue bonds, with coupons attached, or other evidences of debt, borrow money, and buy and sell patent rights, and dispose of privileges to work under and use said patents or portions thereof, reserving royalties or payments under the same in such way and manner as they may prescribe and regulate, and direct in what manner their contracts and obliga-
177 tions shall be made and executed, and generally to do all other matters and things necessary to the proper and successful transaction of the business for which it is organized.

SECTION VI. This act shall be in full force and effect from and after the date of its ratification.

In General Assembly read three times and ratified this 30th day of January, A. D. 1874.

[SEAL.]

J. L. ROBINSON,
Speaker of the House of Representatives.
C. H. BROGDEN,
President of the Senate.

STATE OF NORTH CAROLINA,
OFFICE SECRETARY OF STATE,
RALEIGH, *January 31st*, 1874.

I hereby certify that the foregoing is a true copy of the original act on file in this office.

WM. H. HOWERTON,
Secretary of State.

178 DEFENDANT'S EXHIBIT "B."

OLD DOMINION MINE, VA., *July* 10, 1873.

Mr. Jos. G. Mitchell.

DEAR SIR: I have been here three days and shall leave in the morning for Gold Hill, and have seen the process of "Crosby" work and can add my testimony to others of its perfect success in working sulphuret ores. A few months since it would have been difficult for any one to have convinced me by argument that my ores at Gold Hill could be desulphurized in 2 or 3 hours instead of 15 or 20 minutes, as I am now fully convinced they can be, and that as coarse as peas. Anything that will pass through a- 8 or 10 mesh sieve will be completely desulphurized in passing through this cylinder furnace. The amalgamator is also a perfect success, and the best, in my opinion, that has ever gone on a mine, and the only amalgamator that I have ever seen that I would not have backed my opinion against on a popular Rocker, as that was the best amalgamator — ever has been seen in North Carolina, but this amalgamator of Crosby I am confident will save as much or more gold, and then will not lose one pound of quicksilver where Rocker's will lose on the same quantity of ore 100 pounds. With a mill working 50 tons of ore
179 daily, I cannot possibly see how it can cost over one dollar per ton to crush, grind, amalgamate, and get at least 90 per cent. of the gold from my ores, and not exceeding 50 cents per ton more to save the copper as well as the gold. I do not think we have any *one* but what the copper by this process will pay the whole expense of mining and working the ores, as they assay from 3 to 8 per cent., on the average, in different parts of the mines. Our mill-house expenses now are about $1,500 per month—working not to exceed 300 tons—with machinery adapted to Crosby process, and working by this process we could work 1,500 tons for the same amount, say $1,500, a saving of $6,000, in working 1,500 tons. The question will be asked, How it is possible to handle this quantity of ore? But when it is explained that it takes but 2 men to feed the crusher 12 hours, and that the ore is not touched again until shoveled into the amalgamator from leach-tubs, and the pulp not handled again until it has left [the] mill-house, some idea can be made of the cost. I cannot see how over 12 or 15 men can possibly be employed in [the] mill-house to work 50 tons daily—engineer, firemen, laborers, &c.—with at a cost of not over $1 per ton average; but say—

15 men	$20
8 cords wood, 1½	12
8 cords wood, furnace	12
	$42 00

180 leaving $8 per day for contingent expenses, where is there any process that can be worked to get the free gold alone at double this cost, and then not saving over ⅔ of the gold that is free, as practical men say? I do not now save over ⅔ of the gold that is free in the ore. I see you have a burr mill at work; this is what is wanted

for roasted ore, as it pulverizes very fine and scours the oxides, &c., on the gold. They cannot tell how much this mill would grind, as the crusher and pulverizer will not supply half its capacity, but I can tell you what our 36-inch burr mill can do at Gold Hill. We have been roasting ore in the Kames furnaces and running this mill, 200 revolutions. We can pulverize one ton per hour as fine as flour, and on our ores I do not think a mill would wear out in a year, constant work; it requires very little dressing just enough so — the ore passes through, as far as we have worked it. Noble's and my opinion is this burr would last about as long as if we ground flour. We are now getting ores from which we get from $20 up to $200 per ton, *from* and then save only — as such men as Emerson, Genth, Jackson estimate— not over ¼ to ⅓ of the gold in the ore. What would be the result if I had Crosby's process at work to-day on my mine? Why, I would make a clean profit of $15,000 or $20,000 per month on this ore.

We have been taking tailings, roasting them, and, before burr mill was ready, ground them on Chilian mill, and then ob-
181 tained from $8 to $10 per ton when the sands before roasting did not pan gold.

It is very important to me, and I want this process at work on my mine, as I am throwing away thousands daily. And it also seems to me what you want is a mill practically at work daily, and what you have done here and are doing will be of but little assistance to you in raising money to put up [a] mill, for this reason, if you raise the money it will be on your own statements, for the parties who would likely put money in are those who know nothing, or very little, about working ores.

Now, with a mill at work, I could show a $5,000 bar of gold as a result of a week's work coming to me weekly. I could, without showing any process, get any amount of money. It would come to me; I would not have to seek it, and I think the mistake you have made has been not to have put the process practically at work where you could have obtained sulphuret ores daily. If it had been only a mill working 5 tons daily you could soon have built a larger mill.

In looking over the whole matter here, it seems to me the expenses you are at here cannot benefit you—for this reason: If you get capital from parties who are not acquainted with the treatment of ores they will put up money on your representation; if you get money from parties who are acquainted with ores in the Rocky
182 Mountains and understand what is wanted, they would on seeing the ore here at once say this is an easy ore to work, and there being so much quartz that it was very difficult to work them, the ores of Colorado, &c.

Now, my ores are considered difficult to work, and it is said by practical men if there is a process that will work Gold Hill ores it will work any other ores. Now, I would make this suggestion: Send me a roaster and an amalgamator and I will put it at work on Gold Hill and let Crosby come there. With these we can work ten tons daily. This will bring capital.

Or, I will do this: If you will help me by acceptances or advances to extent of not over $20,000; will put up a new mill entire, capable

of working 50 tons daily, you to hold the whole as security until reimbursed; will pay Mr. Crosby a salary to superintend and the regular royalty for the process, I could have such a mill going in 90 to 120 days.

A mill of this kind running 90 days would bring you capital to put 20 mills in operation. You would not have to seek it; it would seek you.

Or, suppose I put up a mill myself, to which you could refer and would be always open to show any parties you sent, would you give me the process free? I would probaly have to pay largely for the money for a mill, but think I have a channel to get the money by making a large sacrifice.

183 Mr. Crosby will give you result of the ore worked since I came.

Yours respectf'y,

AMOS HOWE.

DEFENDANT'S EXHIBIT "C."

PHILADELPHIA, PA., *Feb.* 13, 1874.

The undersigned hereby subscribe for the amounts set opposite their respective names for the capital stock of the North Carolina Gold Amalgamating Company, under and subject to the resolutions adopted this day at a meeting of the corporators and directors of said company held at their office in the city of Philadelphia, State of Pennsylvania:

	Shares.	
B. A. Mitchell, on behalf of the United States G. & S. A. Company	300	$30,000
T. J. Cram	30	3,000
John Hulme	30	3,000
A. B. Crosby, per J. G. Mitchell, att'y	100	10,000
J. G. Mitchell	100	10,000
B. A. Mitchell	100	10,000
Lloyd P. Smith	20	2,000
A. Middleton, Jr., p'r C. Bochius	60	6,000
Allen Middleton, Jr.		
M. C. Taylor, p'r C. Bochius	20	2,000
C. Bochius	25	2,500
Barton A. Jenks	50	5,000
Thomas H. Neilson	20	2,000
Martin Landenberger	100	10,000

Extract from Said Minute Book, Page 18.

184 PHILADELPHIA, *Feb.* 13*th*, 1874.

On motion, it was resolved that a meeting of the stockholders of this company be called for this day at 1½ o'clock p. m.

A subscription list was then opened, and the following amounts subscribed, viz:

	Shares.	Par value.
The United States Gold and Silver Amalgamating Company of Va., by B. A. Mitchell, att'y	300	$30,000
T. J. Cram	30	3,000
John Hulme	30	3,000
A. B. Crosby, per J. G. Mitchell, att'y	100	10,000
J. G. Mitchell	100	10,000
B. A. Mitchell	100	10,000
Lloyd P. Smith	20	2,000
Allen Middleton, Jr., per C. Buckius	60	6,000
Mrs. M. E. Taylor, per C. Buckius	20	2,000
C. Buckius	25	2,500
Barton H. Jenks	50	5,000
	835	$83,500

On motion, the meeting then adjourned.

185 DEFENDANT'S EXHIBIT "D."

Whereas at a special meeting of the United States Gold and Silver Amalgamating Company of Virginia, held at the office of the said company, on the second day of October, A. D. eighteen hundred and seventy-three, it was unanimously—

Resolved, To accept the proposition and offer made to said company by the North Carolina Gold Amalgamating Company, to wit, to give and to issue to the said United States Gold and Silver Amalgamating Company of Virginia thirty thousand dollars of the capital stock of the said North Carolina Gold Amalgamating Company for the free use of their patent during its continuance to work the ores of the Gold Hill estate, North Carolina, free from any royalties or charge, and also in full payment for all the machinery, fixtures, and appurtenances on the Old Dominion mine, Spottsylvania county, Virginia.

And it was also resolved, "That the vice-president be authorized and empowered to have a proper assignment prepared transferring and conveying to the said North Carolina Gold Amalgamating Company the free use of our patent in accordance with the above proposition, and transfer and convey to them all the fixtures and appurtenances, machinery, &c., now on the Old Dominion mine, Virginia,
and that the said vice-president and secretary duly execute and
186 attest the same and cause the seal of this company to be attached."

Now, therefore, these presents witnesseth that the said United States Gold and Silver Amalgamating Company of Virginia, for and in consideration of the sum of five dollars, the receipt whereof is hereby acknowledged, and of the issuing, transfer, and delivery to them of thirty thousand dollars of the capital stock of the said The North Carolina Gold Amalgamating Company have bargained, sold, released, granted, and confirmed, and by these presents do bargain,

sell, release, grant, and confirm, unto the said The North Carolina Gold Amalgamating Company, its successors and assigns, and to the members thereof jointly, all the machinery, fixtures, implements, goods, chattels, personal property, and appurtenances of the Old Dominion Gold Mining Company of Virginia, situated in Spottsylvania county, State of Virginia, and belonging to the said The United States Gold and Silver Amalgamating Company of Virginia. And these presents further witnesseth that the said The United States Gold and Silver Amalgamating Company of Virginia, for and in consideration of the sum of five dollars to them in hand paid by the same, The North Carolina Gold Amalgamating Company, the receipt whereof is hereby acknowledged, and of the said issuing, transfer, and delivery to them of the said thirty thousand dollars of the capital stock of the said The North Carolina Gold Amalgamating Com-

187 pany, hath and by these presents doth assign, sell, transfer, and set over unto the said The North Carolina Gold Amalgamating Company, its successors and assigns, the full, entire, and exclusive right, liberty, and privilege of using and working the ores of the Gold Hill estate, North Carolina, under and by the Crosby patent and patents and process for amalgamating gold and silver and retorting quicksilver, and for the circulation of quicksilver, and for concentrating ores and quicksilver, and improvements in roasting furnaces, which have been duly assigned and transferred to the said The United States Gold and Silver Amalgamating Company of Virginia on the 17th day of March, A. D. 1873; to have and to hold and enjoy the said right and privilege free, clear, and discharged of and from all royalties, charges, or payments whatsoever to the said The United States Gold and Silver Amalgamating Company of Virginia, and to and for no other use or privilege or place or places whatsoever, and to have, hold, and possess the said right, use, liberty, and privilege as aforesaid to the said The North Carolina Gold Amalgamating Company, its successors and assigns, to the full end of the term for which the said letters patent were granted, or any extension of the said letters which may hereafter be granted, and are or may be held and possessed by the said The United States Gold and Silver Amalgamating Company of Virginia.

188 In witness whereof the said "The United States Gold and Silver Amalgamating Company of Virginia" have hereunto caused the common and corporate seal of the said corporation to be duly affixed this 13th day of February, A. D. eighteen hundred and seventy-four (1874).

[SEAL.] J. G. MITCHELL,
Vice-Pres't & Treasurer.

Signed, sealed, and delivered in the presence of—
JOHN F. BOND.
JAMES R. BOND.

Attest: WM. F. MITCHELL, *Sec'y.*

DEFENDANT'S EXHIBIT "E."

PHILADELPHIA, PA., *Dec.* 9, 1873.

This is to certify that T. J. Cram is entitled to thirty shares of the capital stock of the North Carolina Gold Amalgamating Company; par value, one hundred dollars per share; stock fully paid up, certificate for which will be given on surrender of this receipt.

189 DEFENDANT'S EXHIBIT "F."

PHILADELPHIA, PA., *Dec. 3rd*, 1873.

This is to certify that Lloyd P. Smith is entitled to twenty shares of the capital stock of the North Carolina Gold Amalgamating Co.; par value, one hundred dollars per share; stock fully paid up, certificate for which will be given on return of this receipt.

N. C. G. A. CO.

DEFENDANT'S EXHIBIT "G."

PHILADELPHIA, PA., *Oct.* 30, '74.

This is to certify that B. A. Mitchell is entitled to one hundred shares of the capital stock of the North Carolina Gold Amalgamating Co.; par value, one hundred dollars per share; stock fully paid up, certificate for which will be given on surrender of this receipt.

N. C. G. A. CO.

DEFENDANT'S EXHIBIT "H."

Dr. S. K. Ashton having this day completed the arrangement made with B. A. Mitchell for raising one thousand dollars for the North Carolina Gold Amalgamating Co., he is hereby
190 entitled to receive twenty-five hundred dollars — stock in said company.

Phila., Oct. 29, 1873.

J. G. MITCHELL, *Treas.*

DEFENDANT'S EXHIBIT "I."

PHILADELPHIA, PA., *December* 11, '73.

This is to certify that Thos. H. Neilson is entitled to twenty shares of the capital stock of the North Carolina Gold Amalgamating Co.; par value, one hundred dollars per share; stock fully paid up, certificate for which will be given on surrender of this receipt.

N. C. G. A. CO.

DEFENDANT'S EXHIBIT "K."

PHILADELPHIA, PA., *Oct.* 31, 1873.

This is to certify that C. Bochius is entitled to twenty-five shares of the capital stock of the North Carolina Gold Amalgamating Co.; par value, $100 per share; stock fully paid up, certificate of which will be issued on return of this receipt.

WM. F. MITCHELL, *Sec'y.*

191 DEFENDANT'S EXHIBIT "L."

PHILADELPHIA, PA., *Feb.* 13, 1874.

This is to certify that the estate of Joseph B. Mitchell, deceased, is entitled to twenty shares of the capital stock of the North Carolina Gold Amalgamating Co.; par value, $100 per share; stock fully paid up, certificate for which will be given on return of this receipt.

WM. F. MITCHELL,
Sec'y N. C. G. A. Co.

DEFENDANT'S EXHIBIT "M."

PHILA., PA., *October* 31*st*, 1873.

This is to certify that Barton H. Jenks is entitled to fifty shares of the capital stock of the North Carolina Gold Amalgamating Company; par value, $100 per share; stock fully paid up, certificate for which will be given on return of this receipt.

WM. F. MITCHELL,
Sec'y N. C. G. A. Co.

DEFENDANT'S EXHIBIT "N."

PHILA., PA., *Oct.* 31*st*, '73.

192 This is to certify that the United States Gold & Silver Amalgamating Co. of Virginia is entitled to three hundred shares of the capital stock of the North Carolina Gold Amalgamating Co.; shares $100 each; stock fully paid up, certificate of which will be given on return of this receipt.

DEFENDANT'S EXHIBIT "O."

PHILA, PA., *Feb.* 10, 1874.

This is to certify that John Hulme is entitled to thirty shares of the capital stock of the North Carolina Gold Amalgamating Co.; par value, $100 per share; stock fully paid up, certificate of which will be issued on return of this receipt.

DEFENDANT'S EXHIBIT "P."

Received, Phila., Oct. 11, 1873, of Mr. M. E. Taylor the sum of nine hundred and thirty $\frac{80}{100}$ dollars in certificate of Commonwealth National Bank as a loan to the N. Carolina Gold Amalgamating Company.

DEFENDANT'S EXHIBIT "Q."

PHILA., PA., *Oct.* 30*th*, 1873.

193 This is to certify that A. B. Crosby is entitled to one hundred shares of the capital stock of the North Carolina Gold Amalmating Company; par value, $100 per share; stock fully paid up, certificate for which will be given on surrender of this receipt.

DEFENDANT'S EXHIBIT "R."

PHILA., PA., *Oct.* 30, 1873.

This is to certify that Joseph G. Mitchell is entitled to one hundred shares of the capital stack of the North Carolina Gold Amalgamating Company; par value, $100 per share; stock fully paid up, certificate for which will be given on surrender of this receipt.

DEFENDANT'S EXHIBIT "S."

PHILA., PA., *March 17th*, 1874.

This is to certify that Mary A. Neilson is entitled to fifteen shares of the capital stock of the North Carolina Gold Amalgamating Company; par value, one hundred dollars per share; stock fully paid up, certificate for which will be given on return of this receipt.

N. C. G. A. CO.

194 *Extract From Said Minute Book, Pages* 87–92.

PHILA., *November 2nd*, 1874—3.30 p. m.

An adjourned meeting of the board of directors was held at 3.30 this afternoon, a quorum present, as follows:

J. G. Mitchell, president, in the chair; T. J. Cram, L. P. Smith, A. B. Crosby, and A. G. Elliott, and J. D. Mitchell, by attorney. A further discussion took place on the suggestions of Judge P. C. Wright, representing the New York parties, and certain items were agreed upon as a basis of settlement between the North Carolina Ore Dressing Co. and this Co. as follows:

Office of the North Carolina Gold Amalgamating Company, N. E. Cor. 3rd & Chestnut Sts.

PHILADELPHIA, *November 2nd*, 1874.

At a meeting of the board of directors of the North Carolina Gold Amalgamating Company held this day, a quorum being present; also being present with the board Mr. P. C. Wright, of the city of New York, representing the North Carolina Ore Dressing Company, the following suggestions were mutually proposed and discussed and were agreed to as presenting a basis for an arrangement of all matters in controversy between said companies concerning the Gold Hill mines in Rowan county, North Carolina, and for mutual co-operation in the operating said mines in the future for the common
195 interest of all concerned, that is to say:

1. The capital stock shall be valued at par, $1,000,000.

2. The treasurer shall show either money or stock to the whole amount of the capital, or what disposition has been made of the stock already disposed of.

3rd. No stock shall be disposed of by the company at less than par value.

4th. Inasmuch as there are outstanding claims which, from present understanding, should of right be questioned, a sufficient amount of stock shall be retained in the treasury to cover such claims in the contingency of their being adjudged valid.

5th. All stock already issued, except the $100,000 now in the hands of W. H. Bailey, trustee, shall be returned to the company, and one (1) new share at par of $100 shall be issued for every four (4) thus returned; and in case of fractional amounts, scrip of the company shall be issued for such amounts.

6th. It is understood that in the event of a settlement hereby suggested the North Carolina Ore Dressing Company is to cause the title claimed by it to the Gold Hill mining property in Rowan county, North Carolina, to be vested in the North Carolina Gold Amalgamating Company either by decree of the court or by
196 voluntary conveyance in fee-simple of all its rights and title to said property. In consideration whereof the North Carolina Gold Amalgamating Company consents that the $100,000 stock of their company held by W. H. Bailey in trust may be transferred to the North Carolina Ore Dressing Company.

7th. The capital stock having been surrendered to the company according to article 5th, and one share having been issued for every four (4) held by present stockholders, with the exception named in article 5th, the New York parties are to advance an amount of cash sufficient to pay the existing debts of the North Carolina Gold Amalgamating Company, of which a schedule shall be furnished and verified, and to meet the necessary demands of the mine for its proper development and for working it in the best practical manner for all parties concerned, for which advances they are to receive stock at par; and after the exigencies of the company as herein suggested have been provided for, and the mine shall be self-sustaining, whatever stock remains undisposed of shall be divided *pro rata* among the then stockholders.

8th. In reference to the existing mortgage on the Gold Hill property in favor of W. A. Coit, which it is understood may be contested by the North Carolina Ore Dressing Company, or any other
197 party legally interested in the property embraced in that mortgage, the North Carolina Gold Amalgamating Company consents that the New York parties, represented by P. C. Wright, may contest that mortgage, and, in the event that they shall be successful in the contest, a sufficient amount of the stock of this company shall be reserved to pay reasonable expenses and cost of suit, and, in the event of an amicable settlement with said Coit by way of compromise, whatever amount shall be paid him shall be settled for in stock of the North Carolina Gold Amalgamating Company at par, or in cash, at the discretion of the board. In reference to the two (2) mortgages prior to that of Coit resting upon the property there is no dispute as to their validity or equity.

9th. The board of directors, on the consummation of the agreement herein indicated, shall have power to settle all reasonable claims for commissions, costs, and expenses incurred in effecting the arrangements herein contemplated.

10th. Upon the consummation of the agreement herein indicated it is understood that the office of the company may be removed to New York if the majority of the directors may so determine; also that five (5) of the New York parties shall be at once elected di-

rectors of the company, and that one of the executive officers, either president or vice-president, secretary or treasurer, shall be
198 chosen from the Philadelphia stockholders.

11th. It is mutually understood and agreed that the consummation of the arrangement herein suggested shall be effected at the earliest day practicable, and that all parties herein acting at the present time shall use all reasonable efforts to that end. It is also further understood that these suggestions propose a basis of settlement of all difficulties existing between the two (2) companies named herein concerning the Gold Hill mining property and its appurtenances and to the perfecting the title to the property beyond all further dispute. It is further understood that Mr. P. C. Wright is to present the plan to the consideration of his constituents in New York at the earliest day practicable, and return their reply thereto promply to the board. It is further understood that the whole amount of the stock of this company actually issued is five thousand (5,000) shares, amounting nominally to $500,000, exclusive of the one thousand shares herein referred to, now in the hands of W. H. Bailey, as trustee.

On motion, adjourned to meet Nov. 31st, at 10.30 a. m.

WM. F. MITCHELL, *Sec'y.*

199 PHILA., *Nov. 3rd*, 1874.

An adjourned meeting — board of directors was held this day at 10.30 a. m. A quorum present as follows: J. G. Mitchell, president, in the chair; T. J. Cram, L. P. Smith, A. B. Crosby, and A. G. Elliot. The meeting was called for the purpose of considering the plan proposed by P. C. Wright on behalf of the North Carolina Ore Dressing Co., whereupon, on motion of Gen'l T. J. Cram, it was resolved that the president and secretary sign the papers as drawn and approved by this board. On motion, resolved, that the secretary be requested to call a meeting of stockholders for November 5th, 1874, at 3.30 p. m., to consider the New York proposition and act on the same. On motion, adjourned at the call of the president.

WM. F. MITCHELL, *Sec'y.*

PHILA., *Nov. 5th*, 1874.

A meeting of the stockholders was held this day at 3.30 p. m., which was called to consider the New York proposition. On motion, J. G. Mitchell was called to the chair and William F. Mitchell appointed secretary. The chairman then explained at length to the meeting the claim of the New York Ore Dressing Co. against this Co., and their proposition to settle all difficulties between the two companies. The secretary then read the preliminary agree-
200 ment, signed by P. C. Wright, on behalf of the New York parties, and by the president and secretary, on behalf of this company. Thos. H. Neilson then reread the agreement and discussed the same article by article, whereupon, on motion of L. P. Smith, seconded by Jno. R. Hall, it was resolved that the agreement approved by the board of directors of the North Carolina Gold Amalgamating Co. is hereby approved by the stockholders of the

said Co., with the proviso that in the final agreement the claims referred to in article 4 shall be set forth in detail, and request the board of directors that in the final contract a definite time shall be fixed for the consummation thereof, after which a stock vote on the above resolution was taken, the same being unanimous, the following stock voting:

	Shares.
The U. S. G. & S. A. Co. of Va	185
J. G. Mitchell	160
B. A. Mitchell	100
A. B. Crosby	320
B. H. Jenks	40
C. Bochius	50
M. E. Taylor, by E. Bochius, att'y	90
L. P. Smith	200
T. H. Neilson	80
S. K. Ashton	100
Est. J. B. Mitchell, dec'd, by J. G. M., att'y	260
J. J. Smith, by L. P. Smith	40
A. A. Comfort, by C. Bochius	5
A. G. Elliot	76
W. H. Baily, trust., by W. H. Mitchell, att'y	1,000
O. J. Noble, by A. B. Crosby	50
M. D. Noble, by A. B. Crosby	50
	2,806
201 Forward	2,806
F. Allen	100
Ann E. Hall, by J. R. Hall, att'y	198
J. R. Hall	30
W. F. Mitchell	16
M. A. Neilson	70
E. A. Bochius, by C. Bochius, att'y	15
J. D. M. Mitchell, by J. G. M., att'y	80
B. K. Jamison & Co., by B. H. Jenks, att'y	160
E. P. Haskins, by C. R. Haskins, att'y	40
E. T. Mockridge, by J. G. M., att'y	195
W. B. Buck	80
H. H. Barton	20
A. Howes, by W. F. Mitchell, att'y	850
C. H. Elliott	1
W. S. Benting, by M. Moore, att'y	50
Mechanics' Bank, by G. H. Stuart, pres't	30
	4,741

The chairman presented the following paper for the signatures of the stockholders:

PHILA., *Nov. 5th*, 1874.

Whereas the directors of the North Carolina Gold Amalgamating Company have entered into a preliminary agreement with P. C. Wright, of New York, acting for certain parties in that city, for the purpose of settling the disputes existing between the "North Carolina Ore Dressing Company" and this company, and also to provide funds for the payment of all debts due by this company and put the mines in paying condition, now this witnesseth: That we, the undersigned stockholders in said North Carolina Gold Amalgamating Company, hereby ratify and confirm the action of the di-
202 rectors and endorse their proceedings in the matter, the said preliminary agreement having been fully explained to us.

This paper obtained the signatures of 4,741 shares of stock as enumerated above.

On motion, adjourned.

WM. F. MITCHELL, *Sec'y.*

203 DEFENDANT'S EXHIBIT "T."

PHILADELPHIA, PA., *Nov.* 5, 1874.

Whereas the directors of the North Carolina Gold Amalgamating Company have entered into a preliminary agreement with P. C. Wright, of New York, acting for certain parties in that city, for the purpose of settling the dispute existing between the "North Carolina Ore Dressing Co." and this company, and also to provide funds for the payment of all debts due by this Co. and put the mines in paying condition, now this witnesseth: That we, the undersigned stockholders in said North Carolina Gold Amalgamating Co., hereby ratify and confirm the action of the directors and endorse their proceedings in the matter, the said preliminary agreement having been fully explained to us.

Name.	No. of shares.
The United States Gold & Silver Am. Co., of Va., by A. B. Crosby, president	185
J. G. Mitchell	160
B. A. Mitchell	100
A. B. Crosby	320
Barton H. Jenks	40
E. B. N.	60
M. E. Taylor, p'r C. Bochius, att'y	80
T. J. Cram	160
Lloyd P. Smith	200
Thomas H. Neilson	80
Samuel K. Ashton	100
Allen Middleton, Jr.	240
J. G. Mitchell, executor	260
Jno. Jay Smith, att'y L. P. Smith	40

	Name.	No. of shares.
204	F. Allen	100
	V. Boggs, by powers att'y to T. J. Cram	12
	E. Boggs, by power of att'y to T. J. Cram	12
	C. A. Boggs, by power of att'y to T. J. Cram	12
	Mrs. T. J. Cram, by power of att'y to T. J. Cram	4
	A. E. Hall, per J. R. H., att'y-in-fact	198
	Jno. R. Hall	30
	Wm. F. Mitchell	16
	A. F. Porter	40
	Mary A. Neilson, per T. H. Neilson, att'y	70
	E. S. p'r C. Bockius	15
	W. Cobb	12
	J. D. Mitchell, p'r J. G. Mitchell, att'y	80
	B. K. Jamison & Co., Barton H. Jenks, att'y	160
	E. P. Haskins, p'r C. R. Haskins, att'y	40
	E. T. Mockridge, per J. G. Mitchell, att'y	195
	W. B. Buck	80
	H. H. Barton	20
	Amos Howes, by Wm. F. Mitchell, att'y	850
	Fannie N. Wells, by Thomas H. Neilson, att'y	40
	A. A. Comfort, per C. Bockius	5
	A. G. Elliot	76
	Wm. H. Bailey, trustee, by Wm. F. Mitchell, att'y	1,000
	O. J. Noble, by A. B. Crosby, att'y	50
	Mary D. Noble, by A. B. Crosby, att'y	50
	Wm. S. Bunting, by M. Moore	78
	Charles H. Elliot	1
	J. W. Bradley	

205 DEFENDANT'S EXHIBIT "U."

GOLD HILL, N. CAROLINA, *May 12th*, 1873.

Messrs. A. B. Crosby, B. A. Mitchell, J. G. Mitchell.

GENT-: I make you the following proposition with reference to placing the "Crosby patent and process for amalgamating gold & silver" upon the Gold Hill property, viz:

First. You to provide $25,000 for the purpose of erecting a twenty-ton mill at such place as may be selected by Mr. Crosby and for furnishing the same with the requisite driving power, crushers, pulverizers, amalgamators, and other necessary machinery.

Second. The mill building, with machinery and fixtures, to be your personal property, with privilege of removal by you in case I am disturbed in possession of the Gold Hill property by other claimants or in case of dissolution of an agreement based upon this proposition, but to be used exclusively for our joint interest and profit while on this property.

Third. The net profit derived from working said mill to be equally divided between you and myself; that is, I am to have one-
206 half and you one-half, it being understood that seven dollars expense per ton is to be allowed for mining ore and three dollars per ton for milling.

Fourth. After this mill has run long enough to satisfy you of the expediency of enlarging operations here you are to have the privilege of accepting article No. 1 of a written proposition submitted to you by me under date of April 26, 1873.

Fifth. This arrangement is to continue for five years unless sooner dissolved by mutual agreement or unless article No. 1 of the proposition dated April 26, 1873, is accepted by you.

Sixth. This proposition to be accepted or rejected within thirty days from this date.

AMOS HOWES.

DEFENDANT'S EXHIBIT "V."

GOLD HILL, *Jan.* 21, 1873.

Mr. Jos. G. Mitchell.

DEAR SIR: Mr. E. Manney on the 26th ultimo handed me a letter from you requesting him to give the price of some sulphurets, the same day I wrote you, but yesterday's mail the letter was re-
207 turned from Dead Letter office for want of stamp, my young man omitting to put on stamp and the office here sending it without a stamp.

I am the owner of the Gold Hill mines and am now working the mines for free gold. We have a large amount of tailings which have been concentrated to almost pure sulphurets. I will sell 10 or 20 tons of these tailings or sulphurets ores at $20 per ton delivered in Salisbury, you furnishing bags or boxes, the ore to be paid for before it leaves the mine.

If you have not put up your works I would make a suggestion, as I have had some little experience in small works in city to demonstrate processes to work ores. Go to some mine where you can get sulphuret ores and any steam you may require. One good, practical demonstration on a mine working the ore successfully is worth more than a year's work in a city or laboratory scale. You can get ore for nothing on a mine to experiment or test a process, and the expense of putting up works to work 1 or 2 tons per day will not cost 25 per cent. as much as a city works.

I have an abundance of gold, copper, and silver that is worth or contains from 50 to 100 [per cent.] per ton in gold, silver and copper, and I make the offer to any one who thinks they can work sulphurets to sell them 5 or 10,000 tons of ore, guaranteeing the
208 ore shall contain by assay $20 value in gold. silver, and copper, and to sell at one-third the assay, or if they will demonstrate the process will save 75 per cent. of the gold, silver, and copper in the ore by assay it will give a liberal price for the use of it on my property. To test a process in a city will cost more thousands than it would hundreds on a mine. I have lost considerable money in trying to work people's process—that were represented as perfect in a laboratory experiment, but when practically set at work on a mine were perfectly worthless—and now when they come to me I have but one answer to demonstrate your process on mines. If it work as represented I will give you a tract that will make all the money that any one should have in 5 years.

I have long since given up testing processes. Show me practical results on mine ore, on the mine—we will not disagree about the price for the use of it.

Yours very respect., AMOS HOWES.

DEFENDANT'S EXHIBIT "W."

GOLD HILL, *Jan.* 24, 1873.

Mr. Jos. G. Mitchell.

DEAR SIR: By yesterday'- mail Mr. Coit enclosed me a let-
209 ter he received from Mr. Geo. E. Coolidge calling his attention to Prof. Crosby's process and enclosing an article from a paper giving a description of the working of this process, guaranteeing 80 per cent. of assay at a cost of reduction of not over $3.

I have a large pile of concentrated sulphurets. The lowest assay I have seen on these was $30. To test this process I will deliver 5 or 10 tons at Salisbury, you furnishing bags, free of cost to you, you paying only the freight and transportation, on the condition I shall have the privilege of placing a man to see these 10 tons work-by this "Crosby" process practically. I have to-day the best mine in the United States, taking everything into consideration, if 80 per cent. of the metals can be saved. The free gold in the ores pays for working, and the estimate is we do not realize over 20 or 25 per cent. of what they contain.

If you accept my proposal to pay for bags and freight from Salisbury I will have the sands shipped as soon as bags arrive.

Yours truly, AMOS HOWES.

210 DEFENDANT'S EXHIBIT "X."

GOLD HILL, *Feb.* 23, '73.

Mr. Jos. G. Mitchell.

DEAR SIR: I have to-day completed the shipment of the 50 bags of sands. It has rained nearly all the time since the bags arrived, and the roads have been in such a horrible condition it has been next to impossible to get the sands wagoned to Salisbury. As soon as they arrive at the mine please inform me when you will be prepared to work them and I will either come myself or send a man to see them worked, and I trust it may be a perfect success. There is one thing certain: I have the ores that contain from $50 to $100 per ton in gold and copper in abundance. Any process that will get 80 per cent. of gold and copper will be of great importance to me. The sands I have sent you will assay, I think, from $18 to $20 per ton gold and from 3 to 5 per cent. copper, as I have had several assays from same pile of sands I send you, although I have seen assays much larger. The sands have been passed twice through our rocker or amalgamator.

I think you will find these sands much more difficult to
211 desulphurize than the King mountain. There is one thing: If you can make a success with these sulphurets you will have no difficulty with any sulphurets in any part of the United States,

for all parties agree that have tested them that they are the most difficult ores to treat of any they have handled.

Yours respectfully, AMOS HOWES.

DEFENDANT'S EXHIBIT "Z."

Whereas at a special meeting of the United States Gold & Silver Amalgamating Company of Virginia, held at the office of the said company on the second day of October, A. D. 1873, it was unanimously resolved "to accept the proposition and offer made to said company by the North Carolina Gold Amalgamating Company, to wit, to give and to issue to the said United States Gold and Silver Amalgamating Company of Virginia thirty thousand dollars of the capital stock of the said North Carolina Gold Amalgamating Company, for the free use of their patent, during its continuance, to work the ores of the Gold Hill estate, North Carolina, free from any royal-
212 ties or charge, also in full payment for all the machinery, fixtures, and appurtenances on the Old Dominion Mine, Spottsylvania county, Virginia;" and it was also resolved "that the vice-president be authorized and empowered to have a proper assignment prepared, transferring and conveying to the said North Carolina Gold Amalgamating Company the free use of our patent in accordance with the above proposition, and transfer and convey to them all the fixtures and appurtenances, machinery, &c., now on the Old Dominion Mine, Spotsylvania county, Virginia, and that the said vice-president and secretary duly execute and attest the same:

And whereas at a meeting of the said the United States Gold and Silver Amalgamating Company of Virginia, held at the office of the said company the 13th day of February, A. D. 1874, it was unanimously resolved "that the resolution passed at a meeting of this company on October 3rd, 1873, be carried into effect, and that the transfer be made in accordance with the above resolution:"

Now, therefore, these presents witnesseth that the said the United States Gold and Silver Amalgamating Company of Virginia, for and in consideration of the sum of five dollars, the receipt whereof is hereby acknowledged, and of the issuing, transfer, and delivery to them of thirty thousand dollars of the capital stock of the said the North Carolina Gold Amalgamating Company, have bargained, sold, released, granted, and confirmed, and by these presents do bargain, sell,
213 release, grant, and confirm, unto the said the North Carolina Gold Amalgamating Company, its successors and assigns, all the machinery, fixtures, implements, goods, chattels, personal property, and appurtenances lately upon the land and estate of the Old Dominion Gold Mining Company of Virginia, situated in Spottsylvania county, State of Virginia, and belonging to the said the United States Gold and Silver Amalgamating Company of Virginia; and these presents further witnesseth that the said the United States Gold and Silver Amalgamating Company of Virginia, for and in consideration of the sum of five dollars, to them in hand paid by the said the North Carolina Gold Amalgamating Company, the receipt whereof is hereby acknowledged, and of the said issuing, trans-

fer, and delivery to them of the said thirty thousand dollars of the capital stock of the said the North Carolina Gold Amalgamating Company, hath, and by these presents doth, assign, sell, transfer, and set over, unto the said the North Carolina Gold Amalgamating Company, its successors and assigns, the full and exclusive right, liberty, and privilege of issuing and working the ores of the Gold Hill estate, North Carolina, under and by the Crosby patent and patents and process for amalgamating gold and silver and retorting quicksilver, and for the circulation of quicksilver, and for concentrating ores and quicksilver, and improvements in roasting-fur-
214 naces, which have been duly assigned and transferred to the said the United States Gold and Silver Amalgamating Company of Virginia on the 17th day of March, A. D. 1873; to have and to hold and enjoy the said right and privilege free, and disdischaged of and from all royalties, charges, or payments whatsoever to the said the United States Gold and Silver Amalgamating Company of Virginia, and to and for no other use or privilege or place or places whatsoever, and to have, hold, and possess the said right, use, liberty, and privilege as aforesaid to the said the North Carolina Gold Amalgamating Company, its successors and assigns, to the full end of the term for which the said letters patent, which may hereafter be granted for improvements thereon, are or may be held and possessed by the said the United States Gold and Silver Amalgamating Company of Virginia.

In witness whereof the said the United States Gold and Silver Amalgamating Company of Virginia have hereunto caused the common and corporate seal of the said corporation to be duly affixed this thirteenth day of February, A. D. 1874.

[SEAL.] J. G. MITCHELL,
Vice-Pres't.

Attest: WM. F. MITCHELL, *Sec'y.*

Signed, sealed, & delivered in the presence of—
C. BOCHIUS.

215 STATE OF PENNSYLVANIA, } *ss:*
City of Philadelphia, }

Be it remembered that on the nineteenth day of February, in the year of our Lord eighteen hundred and seventy-four, before me, a notary public duly commissioned and qualified, and resident in the city, county, and State aforesaid, personally appeared Joseph G. Mitchell, vice-president of the above-named company, and, being duly sworn, deposeth and saith that he was personally present at the execution of the above-written assignment or deed of conveyance, and saw the common seal of the said company, viz: The United States Gold and Silver Amalgamating Company of Virginia, duly affixed thereto, and that the said seal so affixed thereto is the common and corporate seal of the said company and that the above-written assignment or deed of conveyance was duly assigned, sealed, and delivered by and as and for the act and deed of the said above-mentioned company for the uses and purposes therein mentioned,

and that the name of the deponent subscribed to the said assignment or deed of conveyance, as president of the said company, in attestation of the due execution and delivery of the said assignment, is of this deponent's own proper and respective handwriting.

Sworn and subscribed the day and year aforesaid, before me.

Witness my hand & seal.

[SEAL.] SAMUEL B. HUEY,
Notary Public.

216 DEFENDANT'S EXHIBIT "A No. 1."

This deed, made this thirteenth day of February, A. D. 1874, by and between B. Arthur Mitchell, of the city of Philadelphia, trustee as hereinafter mentioned, of the first part, and the North Carolina Gold Amalgamating Company of the second part—

Whereas a certain lease and agreement, dated the 3rd day of October, A. D. 1873, was made and entered into by and between Amos Howes, of Gold Hill, Rowan Co., State of North Carolina, and the said B. Arthur Mitchell, as trustee for and on behalf of himself and such *cestui que trusts*, as he might hereafter name, as by reference unto the said recited agreement hereto annexed for its terms, covenants, and conditions will fully appear;

And whereas the said B. Arthur Mitchell, in and by a certain declaration of trust duly executed the 17th day of November, A. D. 1873, did therein and thereby certify, covenant, acknowledge, and declare that the said herein above-recited lease and agreement was so made to him and so held by him, according to the terms, provisions, and conditions of said agreement for the benefit and behoof of himself, and such other persons as should thereafter become members of a certain corporation to be incorporated by the Legislature of the State of North Carolina to be known as the North Carolina Gold Amalagating Company, and that he would
217 upon the due incorporation of said company assign, transfer, and set over the said lease and agreement to the said company, as by reference to the said recited declaration of trust hereto annexed will duly appear;

And whereas the said The North Carolina Gold Amalgamating Company has been duly incorporated and made a body politic and corporate by the Legislature of the State of North Carolina on the 30th day of January, A. D. 1874, as by reference thereto for its purpose and objects will more fully and at large appear;

And whereas, at a meeting of the board of directors of the said The North Carolina Gold Amalgamating Company, held at the office of the said company in the city of Philadelphia, the following resolution was uninanimously adopted:

Resolved, That in pursuance of the terms of the declaration of trust executed by B. A. Mitchell on the 17th day of November, A. D. 1873, he, Mr. Mitchell, be, and hereby is, requested to assign, transfer, and convey to this company the lease and agreement made between Amos Howes and himself, as by reference to the minutes of said company will more fully appear:

Now, therefore, these presents witnesseth: That the said B. Arthur

Mitchell, trustee as hereinbefore mentioned, for and in consideration of the sum of one dollar, lawful money, to him in hand paid by the said The North Carolina Gold Amalgamating Company, the receipt whereof is hereby acknowledged, and for the purpose of carry-
218 ing out and completing the objects and purposes of the aforesaid trust, and of other good and valuable considerations, him hereunto moving, doth grant, assign, transfer, convey, and set over unto the said The North Carolina Gold Amalgamating Company, its successors and assigns, all that the aforesaid and hereinbefore-mentioned and recited lease and agreement, with the buildings, machinery, fixtures, improvements, and appurtenances therein mentioned, and all the franchises, rights, liberties, provisions, covenants, and agreements therein contained and mentioned and subject to the conditions and restrictions therein, together with all and singular the buildings, machinery, and improvements recently erected on the land leased under said recited agreement, with the tools, fixtures, and improvements thereto belonging, with all the estate, right, title, and interest, if any, of him, the said B. Arthur Mitchell, of, in, and to the same, to have, and to hold, and possess the same to and for the purpose, proper use, and behoof of the said The North Carolina Gold Amalgamating Company, its successors and assigns.

In witness whereof the said B. Arthur Mitchell has hereunto set his hand and seal this the day and year first hereinabove written.

B. ARTHUR MITCHELL, *Trustee.* [SEAL.]

Signed, sealed, and delivered in the presence of us—

WM. F. MITCHELL.

——— ———.

219 STATE OF PENNSYLVANIA, }
City of Philadelphia, } *ss:*

On this nineteenth day of February, A. D. 1874, personally appeared before me, Samuel B. Huey, commissioner of deeds, appointed by the State of North Carolina for the State of Pennsylvania, B. Arthur Mitchell, who acknowledged the foregoing instrument of writing to be his deed and conveyance, and desired the same might be recorded as such.

In witness whereof I have hereunto set my hand and official seal the day and year aforesaid.

[SEAL.] SAMUEL B. HUEY,
A Commissioner for North Carolina in Penna.

This agreement, made and entered into this 30th day of October, A. D. 1873, by and between Amos Howes, of Gold Hill, Rowan county, State of North Carolina, of the first part, and B. Arthur Mitchell, of the city of Philadelphia, as trustee for and on behalf of himself and *cestui que trusts* as he may hereafter name, of the second part, whereby the said party of the first part, for himself, his heirs, executors, administrators, and assigns, in consideration of the yearly rent of one dollar, lawful money of the United States, and of

the covenants, stipulations, and agreements hereinafter men-
220 tioned, to be kept and performed by said party of the second part, trustees aforesaid, his heirs, executors, administrators, and assigns, hath leased, let, and demised let, and by these presents doth lease, let, and demise let, for the period of ten years from the date hereof, unto the said party of the second part hereto, trustee as aforesaid, his heirs, executors, administrators, and assigns, a certain piece or parcel of land *and* situate at Gold Hill aforesaid, and being part and parcel thereof, and described as follows, to wit: Beginning at a red oak blazed on four sides, being south 23, east eight poles from the southeast corner of the "Barnhardt vein mill-house; thence north forty-six degrees east twenty-six poles twelve links to a blazed large black gum; thence south 31½ degrees east forty-nine poles twenty links to a blazed black gum on the east side of the branch; thence south forty-six degrees west twenty-six poles twelve links to a stake on the east side of the Albemarle road; thence north 31½ degrees west forty-nine poles twenty links to the beginning, containing eight acres, more or less, of land, for the erection of a mill building for the working and milling and extraction of the metals from the ores of the Gold Hill property, together with the appurtenances thereto belonging, with the full and free right, liberty, and privi-
lege of ingress and egress thereto for all and every purpose
221 whatsoever connected — or relating to said mill, and with the free and full right of water necessary for said mill and of digging for the same at such places on said Gold Hill property as may be agreed upon.

And the said party of the second part hereby covenants and agrees to proceed at once to the erection and completion of a mill building and requisite machinery for the working of twenty tons daily of the ores of the said Gold Hill property, and state *and* the extraction of such metals therefrom as shall be deemed profitable, the same to be worked and extracted by the method known as the "Crosby patent and process," hereby covenanting that at least eighty per cent. of the gold therein shall be extracted, said percentage to be determined by the assay of said ores, and as respects the copper in said ores, the same to be worked and extracted to such per cent. as may be profitable; the said patent and process now being owned by "The United States Gold and Silver Amalgamating Company of Virginia, and the right to use the same, so far as working and milling the ores of the said Gold Hill property, having been assigned to said party of second part and his *cestui que trusts* free, clear, and discharged from all royalties therefor.

And the said party of the first part hereto, for himself, his
222 heirs, executors, administrators, and assigns, covenants, promises, and agrees to and with the said party of the second part hereto, trustee aforesaid, his heirs, executors, administrators, and assigns, that the party of the second part hereto as aforesaid has, shall, and may have at any time during the continuance of this lease and agreement, and for the period of one year thereafter, the full, free, and absolute right, liberty, and privilege of removing the said mill, machinery, and fixtures and appurtenances thereto of and from the

said described tract of land and off and from the said Gold Hill property and estate without let or hindrance from him, the said party of the first part, or from any other person or persons whomsoever; and that the said mill building, machinery, and fixtures and appurtenances thereto belonging are and shall be deemed the personal property and state of said party of second part, trustee aforesaid, his heirs, executors, administrators, and assigns.

And the said party of first part hereto, for himself, his heirs, executors, administrators, and assigns, hereby covenants, promises, and agrees to and with the said party of the second part hereto, trustee aforesaid, his heirs, executors, administrators, and assigns, to deliver daily, at his own cost and expense, twenty tons of the ores of the said Gold Hill property at the said mill, or such place as said party of second part may name within a radius of fifty yards from
223 said mill, and that the said ores shall be of full average quality of the ores of the said Gold Hill property, the said average to be determined by assay by said parties of first and second part thereto.

And it is hereby mutually covenanted, agreed, and understood between the said parties of the first and second parts hereto as aforesaid that the gross proceeds arising from the said working of said mill and the extraction of the metals from said ores shall be set apart and divided as follows, to wit:

First. As regards the gold and silver obtained from said ores seven dollars per ton of ore melted is to be first separated and allowed to said party of first part for the full expense of mining said ores, and that three dollars per ton of ore melted is to be separated and kept by said party of second part, and for the full expense of running and working said mill of the extraction of said gold and silver, and that then after such deduction of the said seven and three dollars the net profits are to be equally divided between the said parties of first and second parts hereto as aforesaid.

Second. As regards the copper obtained from said ores it is mutually covenanted and agreed between the parties hereto as aforesaid that the due and proper expense of obtaining the same shall be first allowed said party of second part, and then the net profits and proceeds of the same shall be equally divided
224 between the said parties of first and second parts.

Third. That in case it shall be deemed advisable to convert the refuse matter and material of said ores into a marketable article for paint or any other product, then also the proper and due expense chargeable to making the same shall first be allowed said party of second part, and then the net profits derived from the same shall be also equally divided between said parties of first and second parts, the said party of second part covenants and agrees to keep complete and correct books of account for the purposes herein expressed, to which free access may be had by said party of first part at all reasonable times, and to furnish said party of first part full monthly accounts of their transactions, and to make their joint settlements monthly when the due and proper proportion coming to said party of first part shall be paid.

The said party of the first part covenants to and with said party of second part that he is seized of said Gold Hill estate in fee simple, and hath power and ability to lease and let any part of the same, and that the title thereto vests in him, and that any title thereto that he may hereafter acquire by reason of his connection with the original Gold Hill Mining Company, or which he may hereafter acquire from any source whatever, shall inure and be used to ratify and
225 confirm this lease and agreement, and that he will make, execute, and deliver to said party of second part such further documents and instruments of writing as counsel learned in the law may deem necessary and proper to ratify and effectuate this lease and agreement and to make the same good and valid to said party of second part as aforesaid, and that he will warrant and defend this lease and agreement and the quiet and peaceable enjoyment of the said property by said party of second part as aforesaid against the claims and demands of all and every person and persons whomsoever. It is further mutually agreed and understood that this agreement shall continue in full force and effect for the said period of ten years from the date hereof, and that the said party of first part, for himself, his heirs, executors, administrators, and assigns, and the said party of second part, trustee aforesaid, for himself, his heirs, executors, administrators, and assigns, mutually bind themselves, each to the other, for the full [and] complete performance of the covenants, clauses, promises, and agreements herein named and on their respective parts to be kept and performed.

In witness whereof the said parties to these presents have
226 hereunto set their respective hands and seals the day and year first hereinbefore written.

AMOS HOWES. [SEAL.]
B. ARTHUR MITCHELL. [SEAL.]

Signed, sealed, and delivered in the presence of—
R. H. BROADFIELD.

Pursuant to a decree made by his honor Judge Cannon in the civil action of Amos Howes, plaintiff, and E. Mauney and others, defendants, and for the consideration of a pepper-corn to me paid by Amos Howes, I hereby ratify and confirm the foregoing lease hereinbefore recited. J. S. McCUBBINS, *Receiver*. [SEAL.]

(Here follows acknowledgment.)

To all to whom these presents shall come:

I, B. Arthur Mitchell, of the city of Philadelphia, for myself, my heirs, administrators, executors, and assigns, do by these presents certify, covenant, acknowledge, and declare that the hereto-annexed lease and agreement made and entered into between Amos Howes, of Gold Hill, North Carolina, and myself was so made to me and is so held by me according to the terms, provisions, and conditions of said agreement for the benefit and behoof of myself and such
227 other persons as shall here[after] become members of a certain corporation to be incorporated by the Legislature of the

State of North Carolina, to be known as the "North Carolina Gold Amalgamating Company," according to their respective proportions of the stock of said company, and that I will, upon the due incorporation of said company, assign, transfer, and set over the said annexed lease and agreement to the said company.

Witness my hand and seal this seventeenth day of November, A. D. 1873.

B. A. MITCHELL. [SEAL.]

Witness at signing:
WM. F. MITCHELL.

(Here follows acknowledgment.)

228 DEFENDANT'S EXHIBIT "B No. 1."

Memorandum of agreement, made and entered into this 20th day of May, A. D. 1874, by and between Amos Howes, of Gold Hill, North Carolina, of the first part, and the North Carolina Gold Amalgamating Company (acting herein by J. D. Mitchell, T. J. Cram, and B. A. Mitchell, executive committee of said company, duly appointed by resolution of said company), of the second part, witnesseth:

That the said party of the first part proposes and agrees to sell all of his property, real and personal, in Rowan county, State of North Carolina, with the mining rights and privileges thereof and thereto belonging, including his present house, residence, and furniture therein, to the said party of the second part, and the said party of the second part agrees to purchase the same upon the following mutually agreed terms and conditions as follows, to wit:

The said party of the second part is to increase its capital stock to ten thousand shares of one hundred dollars each, and to give said party of first part, as part payment of said purchase, two thousand shares of said capital stock, full paid, clear of all assessments, except for breach of the warranties and covenants in deed for said property by said party of first part to said party of second part. The said party of second part, as part of said purchase and payment therefor, is to assume and pay the following mortgage debts
229 now upon the said property, viz: A mortgage to Holmes, Mauney, *et al.* of about fourteen thousand dollars ($14,000), another to R. J. Holmes of two thousand two hundred dollars ($2,200), another to W. A. Coit of about twenty-eight thousand dollars ($28,000), and another to said party of second part, held by John Hulme, trustee, of four thousand dollars ($4,000), with the accrued interest on the same and to accrue thereon.

The said party of second part, as part of said purchase and payment, is to pay and give said party of first part for payment of current debts due by him the sum of thirty-five thousand dollars ($35,000), to be paid in manner and way as follows: Five hundred dollars in cash on execution of deed and delivery of possession of property and the acceptances of said party of second part on drafts of said party of first part for the balance as follows: Nine thousand five hundred dollars in thirty days after sight, ten thousand dollars three months after sight, five thousand dollars in four months after

sight, five thousand dollars in five months after sight, and five thousand dollars in six months after sight, none of the said drafts to be issued until after date of deed and delivery of possession.

The said party of the first part agrees to execute and deliver
230 properly drawn deed or deeds for said premises, conveying a full, complete, and perfect marketable title in fee-simple on or before the first day of June next, with full and complete covenants and warranties as to title, seizen, and possession.

And the said party of the first part further agrees to execute and deliver at same time, with said deed, if necessary, by advice of counsel of said company, a separate instrument of writing, covenanting and agreeing to convey to said party of second part all his (the said party of first part) title in and to said property in Rowan county known as "Gold Hill property," which now vests in or may hereafter be acquired by him from his connection with the original Gold Hill Mining Company, or which can, may, or has been acquired by ownership of stock of the said original Gold Hill Mining Company, and in like manner to covenant and agree to remove and release all claims for title or claim or interest in said property by the North Carolina Ore Dressing Company, either by legal proceedings or otherwise, at his cost and charges, and to transfer and assign the same to party of second part, and to covenant and agree also to convey any and all title and claims of title and interest of, in, and to said property which can or may be hereafter acquired by him from any source whatsoever, covenanting both in said deed or deeds and agreement to warrant and defend the said title and prem-
231 ises, with the appurtenances, to said party of second part against himself, and all persons claiming by, from, or under him, and against the claim and claims of all persons whatsoever.

And the said party of the first part further covenants and agrees to assign and transfer to said party of second part one thousand shares of his said capital stock so paid him as security for the full and faithful performance of the covenants, conditions, and warranties in the said deed or deeds and agreements until the said party of the second part, by advice of counsel learned in the law, are satisfied of the full performance of the same, when the said stock is to be transferred to said party of first part, or to such person or persons as he may name.

The said party of the first part further agrees to convey to said party of second part all collaterals connected with his ownership of or litigation touching title, including two judgments (Woodruff & Beech and W. A. Coit) against the Gold Hill Mining Company, and also his interest in the bid of W. H. Bailey at equity sale of interest of said Gold Hill Mining Company, and to allow his name, if necessary, to be used in any legal paper or proceeding touching the title, or the perfecting thereof.

The said party of the first part is also to assign and transfer
232 the existing contract between him and B. A. Mitchell, trustee, and now held by said party of [the] second part, subject to the agreement between him and said Mitchell, trustee, and Holmes *et al.* respecting the payment of said mortgage owned by said

Holmes *et al.*, payable by certain proportion of profits from mill of said company, and which agreement Mr. Howes is to endeavor to have carried out on the part of said Holmes *et al.*

It is further mutually agreed that out of this sale and purchase the four horses, wagon, and buggy belonging to Mrs. Howes are exempt, and that in this sale and purchase the Lentz place purchased by said party of [the] first part from R. J. Holmes is included, and a deed for [the] same to be made party of [the] second part, the said party of [the] first part hereby agrees that any and all judgments against him, or liens for unpaid wages, mechanics' bills, and bills of sale resting against said property or himself are to be satisfied from and out of the said payment of nine thousand five hundred dollars ($9,500) and evidence of satisfaction and payment of said liens, judgments, wages, *et al.*, to be furnished to said party of [the] second part within the said thirty days of acceptance of said draft.

The said party of [the] second part agrees to give said party of [the] first part a lease of said house and messuage and eight acres of land thereto attached for a period of five years free of rent,
233 or so long as said Howes during said period may occupy the same, it being understood that said lease is to be only for the surface of said land.

It being mutually understood that the premises, tracts of land, &c., to be conveyed to said party of [the] second part are known as the "Gold Hill Mining Property," respectively, 18th April, 1870, and registered in Rowan, pages 1 & 7, book 46, the one deed being from Moses L. Holmes & wife *et al.*, and the other from E. Mauney and wife *et al.*, and to include the Rumple field, about 300 acres, and the said Lentz place, as above mentioned, and the house property of two acres conveyed by R. J. Holmes.

It is also the express understanding that the party of the second part is to place in the treasury of the company four thousand shares of the capital stock to be sold and used as working capital on the best terms that can be obtained, to be applied to development and payment of debts and obligations, as above stated.

Witness the hands and signatures of said parties the day and year first hereinbefore written.

AMOS HOWES. [SEAL.]
T. J. CRAM. [SEAL.]
J. D. MITCHELL. [SEAL.]
B. A. MITCHELL. [SEAL.]
Executive Committee.

Signed, sealed, and delivered in the presence of us.
K. W. MAGILL.
R. M. SNYDER,
Witnesses.

234 DEFENDANT'S EXHIBIT "C No. 1."

This indenture, made and executed this the 29th day of May, 1874, by and between Amos Howes and his wife, Sallie A. Howes, of the county of Rowan and State of North Carolina, of the first

part, and the North Carolina Gold Amalgamating Company, a corporation duly created under and pursuant to the laws of the State of North Carolina, of the second part, —:

Whereas the said Amos Howes has agreed to sell and convey to the said party of the second part all of the mining property situate in Rowan county aforesaid, known as the Gold Hill mining property, and also all other lands and real estates of every character, legal or equitable, which he, the said Howes, may own or be justly entitled to, or to claim or to receive a conveyance for, and also all of his personal property and estate (with certain exceptions to be hereinafter specified), and also to do and perform certain other acts more particularly set forth in a certain contract made and entered into between said Amos Howes and the said company, bearing date the 20th day of May, 1874, and to which for greater certainty reference is hereby made, the said company agreeing upon their part to and with the said Amos Howes to assume and pay three several mortgages embracing nearly all of the property intended to be
235 conveyed hereby, one to Mr. L. Holmes, R. J. Holmes, E. Mauney, V. Mauney, B. B. Roberts, and D. A. Davis, and one other to R. J. Holmes, both dated the 18th day of April, 1870, and respectively registered in book 45, the former at page 179, the latter at page 174, of the register's office of Rowan county, the third being a mortgage to Franklin Coit as trustee for and in behalf of W. A. Coit, bearing date the 15th day of September, 1873, and registered in book No. 47, page 412, of said register's office, all of said mortgages having been executed by said Amos Howes, and the said company having further agreed to pay to said Amos Howes the sum of thirty-five thousand dollars, to be applied in payment of his current debts, and also to deliver to said Amos Howes and credit him on the books of said company, and issue to him certificates of stock as paid up and forever free from assessments, &c., two thousand shares of the capital stock of said company:

Now, therefore, this indenture witnesseth that for and in consideration of the premises and of the sum of five dollars to each of the said parties of the first part in hand paid by the said party of second part, at and before the ensealing and delivery of these presents (the receipt and payment whereof is hereby respectively acknowledged by the said parties of the first part), the said parties of the first part have given, granted, bargained, and sold, and do
236 by these presents give, grant, bargain, sell, and convey, unto the said party of the second part, its successors and assigns, all those several tracts, pieces, and parcels of land situate, lying, and being in the county of Rowan aforesaid (intending hereby to convey and assure to the said party of the second part, its successors and assigns, all of the real estate owned by the said parties of the first [part] in said county of Rowan, subject to certain exceptions to be hereinafter more particularly stated), which said tracts of land are bounded respectively as follows, to wit:

(Here follows a description of the several tracts conveyed—13 in number.)

The true intention of this indenture being to convey to the said party of the second part, its successors and assigns, subject to the exceptions aforesaid, all of the estate, right, title, interest, claim, or demand in law or equity or otherwise, howsoever, which the said parties of the first [part] may have of, in, and to any and all real estate, rights, or easements therein, lying or being situate in the said county of Rowan; and it is also the true intent hereof to embrace as part of the realty all the machinery, fixtures, and apparatus connected with the Gold Hill mining business, to have and to hold the aforegranted premises, together with all the privileges and
237 appurtenances thereunto belonging or in anywise appertaining to the said North Carolina Gold Amalgamating Company, the said party of the second part, its successors and assigns, to and for the only proper use, benefit, and behoof of the said party of the second part, its successors and assigns, forever; and the said Amos Howes covenants to and with the said party of the second part, its successors and assigns, that he is seized in fee of the aforegranted premises; that they are free from incumbrances (except as hereinbefore recited); that he has good right and full power to sell and convey the same as aforesaid; that he will make any and all such other and further assurances of or concerning the same to the said party of the second part, its successors and assigns, as [he] may be advised as necessary to the perfecting of the title to the real estate herein granted or intended so to be by their counsel learned in the law, and that he will, and his heirs, executors, and administrators shall, forever warrant and defend the title to said premises to the said party of the second part, its successors and assigns, against the lawful claims and demands of all persons whatsoever.

In witness whereof the said parties to this indenture have hereto set their hands and seals the date above written.

AMOS HOWES. [SEAL.]
SALLIE A. HOWES. [SEAL.]

Witness:
R. H. BROADFIELD.

(Here follows the acknowledgment.)

238 DEFENDANT'S EXHIBIT "D No. 1."

This indenture, made this 21st day of July, in the year of our Lord one thousand eight hundred and seventy-four, between William H. Bailey, commissioner, of the first part, and the North Carolina Gold Amalgamating Company, a corporation duly created under and by virtue of the laws of North Carolina and doing business in the county and State aforesaid, of the second part, witnesseth:

That whereas at Spring term, 1874, of the superior court of Rowan county, William A. Coit obtained a judgment against the Gold Hill Mining Company for the sum of six thousand one hundred and twelve $\frac{89}{100}$ dollars, and that under and by virtue of the provisions of the said judgment the said William H. Bailey was appointed a commissioner to expose to public sale all the legal and equitable interests which the said Gold Hill Mining Company has in and

unto the below-described real estate and mineral interests to satisfy the aforesaid judgment, and whereas the said William H. Bailey, commissioner as aforesaid, proceeded after due advertisement in conformity to the judgment of said court to expose to public sale all the legal and equitable interests which the said Gold Hill Mining Company had in and unto the below-described real estate and mineral interests at the court-house, in Salisbury, on the 15th day
239 of July, A. D. 1874, when and where the North Carolina Gold Amalgamating Company became the last and highest bidder at the sum of one thousand dollars.

And whereas the said sale has been duly confirmed by the judge of the superior court of the 8th judicial district of North Carolina: Now, for and in consideration of the premises, together with the further consideration of one thousand dollars in hand paid to the said William H. Bailey, commissioner as aforesaid, by the said North Carolina Gold Amalgamating Company, the said William H. Bailey, as commissioner, has bargained, granted, and sold, and by these presents doth bargain, grant, and sell, unto the said party of the second part all the legal and equitable right, title, and interest which the said Gold Hill Mining Company has in and unto the real estate and mineral interests situate in Rowan county and State of North Carolina, and known as the Gold Hill property, the metes, boundaries, and descriptions of which will appear more fully by reference to two deeds, the one executed by Moses L. Holmes and the other to Isaac H. Smith, and registered in book No. 40, page 432, in the register's office of Rowan county, the other deed executed by E. B. Rice to the president and directors of the Gold Hill Mining Company and registered in book No. 40, page 88, in the register's office of Rowan county; to have and to hold to the said North
240 Carolina Gold Amalgamating Company and its successors and assigns; and the said William H. Bailey, commissioner as aforesaid, doth warrant and defend the title to the said real estate and mineral interests unto the said party of the second part, its successors and assigns, so far as he is authorized as commissioner under and by virtue of the judgment aforesaid and no further.

In witness whereof the said William H. Bailey doth hereunto set his hand and seal.

W. H. BAILEY, [SEAL.]
Commissioner.

Signed, sealed, and delivered in the presence of—
H. S. LEMLY.

(Here follows the acknowledgment.)

241 DEFENDANT'S EXHIBIT "F No 1."

Exemplification.

STATE OF PENNSYLVANIA, } *ss:*
Philadelphia County, }

Among the records and proceedings of the court of common pleas No. 1, for the county of Philadelphia, State of Pennsylvania, the fol-

lowing may be found as matter of file and of record at No. 1378, December term, 1879, to wit:

Docket Entries. December Term, 1879.

McMurtrie. 1378.	Thomas J. Cram *vs.* The North Carolina Gold Amalgamating Company.	Ami. Action case Feb. 10, 1880, by writing filed. It is agreed that the above action be entered with the same effect as if a sums., retbl. 1st. Mond. March next, had been issued. Served on the proper officers of def't and duly so returned, and that judgment be entered in favor of pl'ff for $13,382.81, with interest from Feb. 17, 1880.
	Eo die judgment.	

242 *Summons in Case.*

C. P., March Term, 1880.

THOMAS J. CRAM
vs.
THE NORTH CAROLINA GOLD AMALGAMATING COMPANY. } No. 1378.

It is agreed that the above action shall be entered with the same effect as if a summons, returnable on the first Monday in March next, had been regularly issued, served on the proper officer of the defendant, and duly so returned.

It is further agreed that judgment shall be entered against the corporation defendant in favor of the plaintiff for the sum of thirteen thousand three hundred eighty-two $\frac{81}{100}$ dollars, with interest from the first day of February, 1880, as per the statement of said claim hereto annexed—

This amicable action and confession of judgment being given in pursuance of a resolution of the board of directors of said company passed at a special meeting held on the tenth day of February, 1880, a copy of which is hereto annexed.

THOS. J. CRAM, *President.*

Attest: THOMAS H. NEILSON, [SEAL.]
Secretary.

243 The following testimony was offered on behalf of L. P. Smith:

EXHIBIT "G No. 1."

No. 282. PHILADELPHIA, *Nov.* 5, 1873.

The Philadelphia Trust, Safe Deposit and Insurance Company.

Pay to Jos. G. Mitchell, treasurer, or order, five hundred dollars.

$500. LLOYD P. SMITH.

EXHIBIT "G No. 2."

No. 423. PHILADELPHIA, *Jan.* 23, 1874.

The Philadelphia Trust, Safe Deposit and Insurance Company.

Pay to W. F. Mitchell, sec'y, or order, five hundred dollars.
$500. LLOYD P. SMITH.

EXHIBIT "G No. 3."

No. 1128. PHILADELPHIA, *Jan. 29th*, 1874.

The Philadelphia Trust, Safe Deposit and Insurance Company.

Pay to W. F. Mitchell, secretary, or order, five hundred dollars.
$500. LLOYD P. SMITH.

244 EXHIBIT "G No. 4."

No. 436. PHILADELPHIA, *Feb. 7th*, 1874.

The Philadelphia Trust, Safe Deposit and Insurance Company.

Pay to W. F. Mitchell, secretary, or order, five hundred dollars.
$500. LLOYD P. SMITH.

EXHIBIT "I No. 1."

No. 518. PHILADELPHIA, *December 18th*, 1874.

Citizens' Bank, S. E. cor. 2nd & Race Sts.

Pay to the order of Lloyd P. Smith three hundred and twenty-eight $\frac{65}{100}$ dollars.
$328.65. WM. F. MITCHELL, *Treas.*

EXHIBIT I No. 2.

Office of the North Carolina Gold Amalgamating Co.

PHILA., *Jan.* 22, 1876.

Thirty days after date we promise to pay to the order of W. F. Mitchell, sec., five hundred dollars, value received, without defalcation.
$500. WM. F. MITCHELL, *Treas.*

Payable at N. E. cor. 3rd & Chestnut, room 7.

245 EXHIBIT I No. 3.

The North Carolina Gold Amalgamating Company.

$948.14. PHILADELPHIA, *September* 30, 1874.

Three months after date I promise to pay to the order of William F. Mitchell, treasurer, nine hundred and forty-eight $\frac{14}{100}$ dollars at Citizens' Bank of Philadelphia without defalcation, value received.
No. 42. Due Dec. 30, '75.

LLOYD P. SMITH, *President.*

EXHIBIT "I No. 4."

No. 509. PHILADELPHIA, *Dec* 1*st*, 1874.

Citizens' Bank, S. E. cor. Second & Race Sts.

Pay to the order of L. P. Smith six hundred and six dollars.

$606. WM. F. MITCHELL, *Treas.*

EXHIBIT "I No. 5."

No. 514. PHILADELPHIA, *December* 2*nd*, 1874.

Citizens' Bank, S. E. cor. 2nd & Race Sts.

246 Pay to the order of L. P. Smith eight hundred and eight dollars.

$808. WM. F. MITCHELL, *Treas.*

EXHIBIT "I No. 6."

No. 423. PHILADELPHIA, *November* 16, 1874.

Citizens' Bank, S. E. cor. 2nd & Race Sts.

Pay to the order of Lloyd P. Smith one hundred and seventeen $\frac{51}{100}$ dollars.

$117.51. WM. F. MITCHELL, *Treas.*

EXHIBIT "I No. 7."

No. 422. PHILADELPHIA, *November* 16*th*, 1874.

Citizens' Bank, S. E. cor. Second & Race Sts.

Pay to the order of Lloyd P. Smith five thousand dollars.

$5,000. WM. F. MITCHELL, *Treas.*

247 EXHIBIT "I No. 8."

Received, Philadelphia, Pa., Feb'y 9th, 1875, of Lloyd P. Smith, Esq., twenty-five dollars as a retainer in the case of Salkeld & Co., of Mauch Chunk, against him and others of the N. C. G. A. Co.

$25.00. THOMAS H. NELSON.

EXHIBIT "I No. 9."

PHILADELPHIA, *May* 13*th*, 1875.

Due Lloyd P. Smith twenty-seven $\frac{63}{100}$ dollars, being interest on note $1,872.50, discounted this day.

$27.63. WM. F. MITCHELL.

EXHIBIT "I No. 10."

The North Carolina Gold Amalgamating Company.

$894.36. PHILADELPHIA, *Oct. 2nd*, 1874.

Three months after date I promise to pay to the order of William F. Mitchell, treasurer, eighteen hundred and ninety-four $\frac{36}{100}$ dollars, at Citizens' Bank of Philadelphia, without defalcation, value received.

No. 41. Due Jan. 2–5, '75.

LLOYD P. SMITH, *President.*

248 EXHIBIT "I No. 11."

PHILADELPHIA, *May 22nd*, 1874.

This is to certify that Lloyd P. Smith is entitled to forty shares of the capital stock of the North Carolina Gold Amalgamating Co., par value, one hundred dollars each. Stock fully paid up. Certificate for which will be issued on return of this receipt.

The condition of theabove receipt for stock is as follows: I have this day borrowed from said Smith one thousand dollars, which I promise to pay on or before June 5th, 1874. If I shall do so, then this receipt to be null, void, and of no effect; otherwise the said stock is to be issued to the said Lloyd P. Smith.

WM. F. MITCHELL,
Sec'y N. C. G. A. Co.

Time extended by mutual consent to the 19th January, 1874.

WM. F. MITCHELL,
Sec'y N. C. G. A. Co.

EXHIBIT "I No. 12."

PHILADELPHIA, *July 7th*, 1874.

This is to certify that Lloyd P. Smith is entitled to fifteen thousand dollars of the mortgage bonds of the North Carolina Gold Amalgamating Co., which are to be delivered as soon as they
249 are printed. These bonds are to secure a loan of seventy-five hundred dollars made by Lloyd P. Smith to the said North Carolina Gold Amalgamating Co., which loan is to be paid at the earliest moment possible.

WM. F. MITCHELL, *Treas.*

EXHIBIT "I No. 13."

Received, Philadelphia, May 20th, 1875, twenty-five dollars from L. P. Smith, account expense fund North Carolina Gold Amalgamating Co., given to P. C. Wright.

$25. WM. F. MITCHELL.

EXHIBIT "I No. 14."

Received, Philadelphia, Oct. 8th, 1875, of Lloyd P. Smith. Esq., twenty-five dollars, in full, for advice and services (in case of Bradford *v.* Smith *et al.*, represented by Frank Etting, Esq.) to date.

$25.00. THOMAS H. NEILSON,
Att'y-at-Law.

250 The following testimony was offered on behalf of B. A. Mitchell, one of the defendants:

EXHIBIT "MITCHELL H."

Propositions.

To J. C. Mitchell, A. B. Crosby, and B. A. Mitchell, in respect to Gold Hill mine, N. C.:

First. The mine valued at $500,000 and Crosby patent at $500,000; to unite the two, and the company to be formed at $1,000,000, of which $250,000 is to be sold—one hundred thousand dollars cash to go to Mr. Howes to perfect title and pay debts, encumbrances, &c., the balance, $150,000, to be applied to building a 60-ton mill and bringing the property into perfect condition and as working capital—the remainder of stock capital, viz., $750,000, to be equally divided between Mr. Howes and owners of patent and process.

Second. A mill to be erected at Gold Hill, Mr. Howes to furnish the ore for the daily capacity of the mill at the mill at a price or basis of $7 per ton to $3 per ton for milling, and profits to be divided equally between Mr. Howes and mill owners; the mill to produce 80 per cent. of gold assay and mill to be arranged to save copper.

251 Third. A loan of $50,000 to be made Mr. Howes, to be repaid out of the profits of the mine, and will give as a bonus for such loan $\frac{1}{3}\frac{7}{2}$ parts of the property, then joint owners to make arrangements with patent owners for use of process or raise the funds to erect the works for the process.

Res'p't. yours, AMOS HOWES.

Gold Hill, April 26th, '73.

Extract from Said Minute Book—Pages 48 *to* 52.

PHILADELPHIA, *May* 26*th*, 1874.

On motion, the following preamble and resolution was unanimously carried:

Whereas an agreement of this date has been made between this company and W. A. Coit relative to the transfer to this company of the mortgage of W. A. Coit against the Gold Hill property and of certain judgments and stock held and owned by him and on the part of this company of certain obligations and acts to be done and performed: Therefore

Resolved, That the vice-president be, and is hereby, authorized and directed to place his signature thereto and cause the official seal

of the company to be thereto attached, and that the secretary
252 be, and hereby is, directed to attest the same, and that the vice-president is hereby directed to duly acknowledge the same.

Copy of Agreement with W. A. Coit.

This agreement, made and entered into this the 26th day of May, 1874, by and between The North Carolina Gold Amalgamating Company, a corporation duly created under the laws of the State of North Carolina, of the one part, and William A. Coit, of the city of Brooklyn, county of Kings and State of New York, of the other part—

Whereas Amos Howes, of the county of Rowan and State of North Carolina, did, on the fourth day of May, 1870, execute and deliver a mortgage to M. S. Holmes, R. J. Holmes, E. Mauney, V. Mauney, B. B. Roberts, and D. A. Davis of all the real estate and mining property known as the Gold Hill mining property, the particular boundaries whereof are particularly set forth in said mortgage, and reference thereto is hereby made for the same for greater certainty, the said mortgage being registered in book No. 45, page 179, of the register's office of Rowan county, to secure the payment of the sum of thirteen thousand six hundred and seventy-four dollars ($13,674), and one thousand and seventy dollars ($1,070) in certain instalments specified in said mortgage; and whereas the said Howes did also on the same day, but subsequent thereto, execute another
253 mortgage, including the same property, and also a house and lot situated at Gold Hill, purchased by said Howes from said Ruben J. Holmes, to the said R. J. Holmes, to secure the payment of the sum of two thousand two hundred dollars ($2,200); and whereas the said Howes being indebted to the said Coit in the sum of twenty-seven thousand six hundred and ninety $\frac{50}{100}$ dollars, executed to him a bill of sale embracing and conveying all the personal property of the said Howes, dated December 14th, 1871, registered in book 46, page 249, and shortly thereafter the said Howes transferred to said Coit six thousand shares of stock in the Gold Hill Mining Company, and also sundry notes on said company, upon which the said Coit afterwards obtained a judgment in the superior court of Rowan county, North Carolina, at spring term, 1872, for the sum of thirty-two hundred and ten dollars, with interest in the sum of twenty-five hundred and nineteen $\frac{49}{100}$ dollars, from the 14th day of April, 1872, in all $5,729.49, and for cost of suit; and whereas, on the 15th day of September, 1873, the same Amos Howes executed to one Franklin Coit, as trustee, a mortgage of the said Gold Hill mining property to secure the payment of the said indebtedness; and whereas the said North Carolina Gold Amalgamating Company have purchased from said Howes the said Gold Hill mining
254 property, subject to the incumbrances aforesaid; and whereas the said W. A. Coit and the said North Carolina Gold Amalgamating Company have mutually agreed to substitute for the mortgage of the said Howes a new mortgage by the said company of the premises to the said W. A. Coit upon the following terms and conditions, to wit: That upon the said Coit conveying or causing to be conveyed the property so conveyed by said deed in trust of date

of September 15th, 1873, to the said North Carolina Gold Amalgamating Company, its successors and assigns, and also assigning and transferring to the said company the said stock of the Gold Hill Mining Company, so transferred by said Howes to said Coit as aforesaid, and also assigning and transferring to said North Carolina Gold Amalgamating Company the judgment so obtained by said Coit against the Gold Hill Mining Company as aforesaid, and also covenanting that he, the said Coit, has not nor will do any act to impair the value of said securities or impede or hinder any proceeding that may hereafter be instituted predicated upon the possession and ownership thereof. The said North Carolina Gold Amalgamating Company will contemporaneously execute to the said Coit a mortgage of all such right, title, and estate in the said premises as the said company may acquire, by virtue of the conveyance hereinbefore stipulated, for and also such other and further estate as it may thereafter acquire,
255 subject, however, to the outstanding mortgages of said M. L. Holmes, R. J. Holmes, E. Mauney, B. B. Roberts, and D. A. Davis, and the mortgage of R. J. Holmes, and likewise subject to any mortgages or deeds in trust which may be executed by said company of the said property to said last-named parties, provided the same are not made to secure to the said parties any other or greater amount than an amount equal to the balance now due and unpaid of the indebtedness of said Howes, as specified in the said mortgages so executed by the said Howes to the said M. L. Holmes and associates and said R. J. Holmes as aforesaid.

The mortgage so to be made by [the] North Carolina Gold Amalgamating Company to said Coit to secure to him the amount specified in the mortgage of September 15th, 1873, payment to be made in the same instalments and at the same time therein specified: Now, therefore, this agreement witnesseth that, in consideration of the premises and of the covenants and agreements hereinafter specified on behalf of the said company, *that* he will cause to be prepared and tendered to the said company, at the law office of McCookle & Bailey, Salisbury, North Carolina, on the 10th day of July next, an assignment, without resource, of all the stock transferred or delivered to him by Amos Howes in the Gold Hill Mining Company, a
256 transfer and assignment, without resource, of the said bill of sale of date of December 14th, 1871, and of any other claims or collaterals he may have received from Amos Howes in consequence of or in relation to or connection with the dealings and transactions between him and the said Howes touching the indebtedness of said Howes to him, and will also, at the same time and place, cause to be prepared and tendered a deed to be executed by Franklin Coit, trustee under the deed of September 15th, 1873, and the said W. A. Coit conveying the premises to the said North Carolina Gold Amalgamating Company without warranty or covenants, except against the acts or incumbrances of the said F. Coit or W. A. Coit, and, upon the performance of the several acts, matters, and things so covenanted to be done and performed by the said W. A. Coit as aforesaid, the North Carolina Gold Amalgamating Company

hereby covenants and agrees to execute to the said W. A. Coit in fee, or to such persons as he may direct, a mortgage, with power of sale, of such right, title, and estate as the said company may then have or may thereafter acquire in the premises, subject to the prior incumbrances of the said M. L. Holmes and associate and R. J. Holmes thereon, or to any future mortgages which may be made to said M. L. Holmes and associates and R. J. Holmes in substitution of the mortgages now held by them, as hereinbefore in the premises
257 more fully set forth, the said mortgage to said Coit to be secured by the title of said company — same property, real and personal, as shall be covered by the prior incumbrances to said M. L. Holmes and associates and the said R. J. Holmes, it being the true intention of the parties hereto that as to the indebtedness of the said Howes to said M. L. Holmes and associates and the said R. J. Holmes, secured by his mortgages as aforesaid, the said M. L. Holmes and associates and R. J. Holmes are to retain their present status as prior incumbrancers.

In witness whereof the parties hereto have interchangeably set their hands and seals the date above written.

T. J. CRAM, [SEAL.]
Vice-Pres't N. C. Gold Amalgamating Company.
WM. F. MITCHELL, *Sec'y.*
WM. A. COIT,
By his att'y-in-fact, BRADFORD,

Witnesses present at the signing and sealing:
JAMES GLENTWORTH, JR.,
J. E. HAMPTON CARCHER.

(Acknowledged in the usual form.)

258 EXHIBIT "MITCHELL B."

This indenture, made the fifteenth day of September, A. D. eighteen hundred and seventy-three, between Amos Howes and Sallie A. Howes, his wife, of the county of Rowan and State of North Carolina, on the one part, and Franklyn Coit, of the said county and State on the other part, witnesseth:

That whereas the said Amos Howes and Sallie A. Howes, his wife, for and in consideration of the sum of one dollar to them in hand paid by the said Franklyn Coit, the receipt whereof is hereby acknowledged, and in further consideration of the purposes hereinafter expressed, have given, granted, bargained, and sold, and by these presents do give, grant, bargain, and sell, to the said Franklyn Coit, his heirs and assigns, all the several tracts of land, together with the mining rights and privileges thereof and thereon, lying and being in the said county of Rowan and State of North Carolina, known as the "Gold Hill mining property," and which is particularly set forth and described by metes and bounds in two several deeds executed to the said Howes (to which reference is made), dated, respectively, on the 18th day of April, 1870, and registered in Rowan county, at pages 1 and 7, book

No. 46, the one deed being from Moses L. Holmes and wife and others, and the other from M. L. Holmes and wife, E.
259 Mauney and wife, and V. Mauney and wife, the intention of this instrument being to convey to the said Franklin Coit, trustee (subject to two certain mortgages bearing date April the 18th, 1870, executed by Amos Howes and wife, and registered in Rowan county, respectively, at pages 174 and 179 of book No. 45), all the title acquired by said Howes to said property under and by virtue of the before-mentioned deeds to him from M. L. Holmes and others, and as derived by them originally from and under a certain deed made to B. B. Roberts by William A. Walton, high sheriff of Rowan county, North Carolina, dated the 6th day of January, 1862, and registered in Rowan county, in book No. 42, page 370, and also to convey to the said Franklyn Coit, trustee, all the title of said Howes in and to the said Gold Hill property which now vests in or may hereafter be acquired by him, the said Howes, from his connection with the original Gold Hill Mining Company, or which he may have or acquire by ownership of stock of the said (original) Gold Hill Mining Company, and also any and all title which may hereafter be acquired by him, the said Howes, from any source whatever, in and to said property; to have and to hold the same, with the buildings, tenements, hereditaments, and appurtenances, to the said Franklyn Coit, trustee, his heirs and assigns, forever.

And the said Amos Howes doth covenant to warrant and
260 defend the same, with the appurtenances, to the said Franklyn Coit, trustee, against himself and all persons claiming under him, and against the claim and claims of all persons whatsoever.

And the said Amos Howes doth further covenant and bind himself to the said Franklyn Coit, trustee, his heirs [and] assigns, that he is seized of the premises, with the appurtenances, in fee-simple, and hath power and ability to convey the same in fee-simple, and hath hereby conveyed the same in fee-simple, subject, nevertheless, to the conditions and provisions hereinbefore and hereinafter contained.

The condition of the above conveyance is such that whereas the above-named Amos Howes is indebted to Wm. A. Coit, of the city of Brooklyn, county of Kings, and State of New York, in the sum of twenty-seven thousand six hundred and ninety dollars and fifty cents ($27,690.50), as stated in account rendered by said Willaim A. Coit to the said Howes, to the first day of the present month of September, 1873;

And whereas it is the purpose of this conveyance to secure the payment thereof: Now, therefore, if the said Amos Howes shall well and truly pay the said principal sum of twenty-seven thousand six hundred and ninety dollars and fifty cents within the period of five years from the date hereof, in proportions and at dates and
261 periods as follows, to wit, three thousand dollars ($3,000) of said principal sum within one year from the date hereof—that is to say, on or before the fifteenth day of September, 1874; five

thousand dollars ($5,000) of said principal sum yearly for the two following years—that is to say, on or before the fifteenth day of September, in the year 1875 and also 1876, and the balance, fourteen thousand six hundred and ninety dollars and fifty cents ($14,690.50), in two equal annual instalments thereafter of seven thousand three hundred and forty-five dollars and twenty-five cents ($7,345.25)—that is to say, on or before the fifteenth day of September [of] each of the years 1877 and 1878, and interest at the rate of eight (8) per cent. per annum quarterly, on the 1st day of December, March, June, and September of each and every year on the unpaid balance of said principal remaining unpaid at the commencement of each quarter until the expiration of five years from the date hereof, then this conveyance to be void and of no effect; but if the said Howes shall fail to pay any or either of the above-named proportions of the principal sum within the periods above named for their payment, or shall fail to pay the quarterly interest at any date when it may become due, it is hereby provided and agreed that the aforesaid Franklyn Coit, trustee, shall enter upon the premises and take possession thereof, and the same shall advertise at three or
262 more public places in said county of Rowan and sell the same at public sale to the highest bidder, and out of the proceeds of said sale the said Franklyn Coit, trustee, is to pay the said William A. Coit such of the said principal sum of twenty-seven thousand six hundred and ninety dollars and fifty cents ($27,690.50) and accrued interest as shall then be due and unpaid, with all reasonable charges and legal costs in executing this trust, and the overplus, if any, he is to pay over to the said Amos Howes, or his order; and it is covenanted and provided that until there is a breach of the foregoing provisos, so as to entitle the said Franklyn Coit, trustee, to enter, the said Amos Howes is to remain in quiet possession and enjoyment of the premises.

In witness whereof we have hereto set our hands and seals the date above written.

AMOS HOWES. [SEAL.]
SALLIE A. HOWES. [SEAL.]

(Here follows the acknowledgment.)

263 EXHIBIT "MITCHELL C."

This indenture, made this 10th day of July, 1874, by and between Franklyn Coit, of Gold Hill, Rowan county, in North Carolina, and William A. Coit, of the city of Brooklyn, county of Kings, and State of New York, of the first part, and the North Carolina Gold Amalgamating Company, a corporation duly created under and pursuant to the laws of the State of North Carolina, of the second part —:

Whereas, on the 15th day of September, 1873, one Amos Howes executed to the said Franklyn A. Coit, as trustee, a mortgage of the Gold Hill mining property to secure the payment of a debt due to the said W. A. Coit of the sum of twenty-seven thousand six hundred and ninety $\frac{50}{100}$ dollars ($27,690.50); and whereas, by agreement

between said Howes and said company, the said company is to assume and pay said debt, and the same has been agreed to by W. A. Coit, and by virtue of said agreement the said Howes has been released from payment of the same, and the said company has been substituted *the* debtor in lieu of said Howes; and whereas there are now two (2) outstanding mortgages on said property—one executed by said company to Moses L. Holmes, Ruben J. Holmes, Ephraim Mauney, Valentine Mauney, T. A. Davis, and B. B. Roberts; the other executed by said company to Ruben J. Holmes—which are prior incumbrances on said property:

264 Now, therefore, this indenture witnesseth: That the said Franklyn Coit, trustee as aforesaid, and the said William A. Coit, subject to said prior incumbrances, have bargained and sold, and do hereby bargain and sell and convey, unto the said North Carolina Gold Amalgamating Company, its successors and assigns, all those tracts, pieces, and parcels of land, together with the mining rights and privileges thereof and thereon, lying and being in the county of Rowan and State of North Carolina, known as the Gold Hill mining property, and the boundaries of which are particularly set forth and described by metes and bounds in two several deeds executed to said Howes (to which for greater certainty as to said boundaries reference is hereby made), dated respectively on the 18th day of April, 1870, and registered in the register's office of Rowan county, at pages 1 and 7 of book No. 46, executed respectively by Moses L. Holmes and wife, Ruben J. Holmes and wife, Ephraim Mauney and wife, Valentine Mauney and wife, B. B. Roberts and wife, and D. A. Davis, and one by Moses L. Holmes and wife, Ephram Mauney and wife, and Valentine Mauney and wife, the intention of this deed being to convey to North Carolina Gold Amalgamating Company, its successors and assigns, subject to the said two certain mortgages bearing date April 18th, 1870, executed by Amos Howes and wife, and registered in Rowan county, respectively,

265 at pages 174 and 179 of book No. 45 of the register's office of Rowan county, all the title acquired by said Howes to said property under and by virtue of the before-mentioned deeds to him, and also to convey to the said company all the title that the said Howes had on the fifteenth day of September, 1873, or thereafter has been acquired by said Howes from his connection with the Gold Hill Mining Company, a corporation duly created under and pursuant to the laws of the State of New York, or which he may have or may acquire by ownership of stock in the said Gold Hill Mining Company, and also any and all title which the said Howes has acquired to said property since the said 15th day of September, 1873, in and to said premises from any source whatsoever.

And the said William A. Coit hereby covenants and agrees to and with the said North Carolina Gold Amalgamating Company that the said premises are free from the incumbrances of either the said W. A. Coit or Franklyn Coit, and that he will warrant and defend the title thereto to the said company against the claims of him, the said W. A. Coit or the said Franklyn Coit, or from any one claiming by, through, or under them or either of them.

In witness whereof the said parties to this indenture have hereto set their hands and seals the date above written.

FRANKLYN COIT, *Trustee.* [SEAL.]
W. A. COIT. [SEAL.]

Witness:
EDWARD SHEARER,
THOMAS H. BAILEY.

266 EXHIBIT MITCHELL "D."

This indenture, made this 10th day of July, 1874, by and between North Carolina Gold Amalgamating Company, a corporation duly created under and pursuant to the laws of the State of North Carolina, of the first part, and Wm. A. Coit, of the city of Brooklyn, county of Kings, and State of New York, of the second part, witnesseth that for and in consideration of the sum of one dollar to the said party of the first part in hand paid, the receipt whereof is hereby acknowledged, have given, granted, bargained, and sold, and do by these presents give, grant, bargain, and sell and convey, to the said party of the second part, subject to a mortgage thereof this day executed by said company to Moses L. Holmes, Ruben J. Holmes, Ephraim Mauney, Valentine Mauney, B. B. Roberts, and B. A. Davis, and also to a mortgage of the same to Ruben J. Holmes all those tracts, pieces, and parcels of land, together with the mining rights and privileges thereof and thereon, lying and being in the county of Rowan and State of North Carolina, known as the Gold Hill mining property, the boundaries of which are particularly set forth and described in two several deeds, one executed by Moses L. Holmes, Reuben J. Holmes, Ephraim Mauney, Valentine Mauney, B. B. Roberts, and D. A. Davis to Amos Howes, registered in book No. 46, page 1,
267 and one other deed from Moses L. Holmes and wife, Ephraim Mauney and wife, and Valentine Mauney and wife to said Howes, registered in book No. 46, page 7, both of the register's office of Rowan county, and all the machinery, tools, fixtures, and appurtenances thereto annexed or thereon situate, with the right of using the same; to have and to hold the aforegranted premises to the said William A. Coit, his heirs and assigns, forever.

The condition of the foregoing deed is such that whereas the North Carolina Gold Amalgamating Company is justly indebted to the said William A. Coit in the sum of twenty-seven thousand six hundred and ninety $\frac{50}{100}$ ($27,690.50), which bears interest from the first day of June, 1874, being the debt due to him originally from said Howes and assumed by said company, as by its bond bearing even date herewith, reference thereto being had, will more fully appear:

Now, therefore, if the said company shall well and truly pay to the said Coit the said indebtedness in the following manner, to wit, three thousand dollars on or before the 15th day of September, 1874, five thousand dollars of said principal sum yearly for the two following years—that is to say, on or before the fifteenth day of September, 1875, and also on the 15th day of September,

1876—and the balance, to wit, fourteen thousand six hundred and ninety $\frac{50}{100}$ dollars ($14,690.50) in two equal annual
268 installments thereafter of seven thousand three hundred and forty-five $\frac{25}{100}$ dollars ($7,345.25)—that is to say, on or before the 15th day of September in each of the years '77 and '78—and interest at the rate of eight (8) per centum per annum quarterly on the 1st days of December, March, June, and September of each and every year on the unpaid balance of said principal sum remaining unpaid at the commencement of each quarter until the fifteenth day of September, 1878:

Now, therefore, if the said party of the first part shall well and truly pay off said indebtedness in manner as aforesaid, then the foregoing deed and every part thereof to be void; but if the said party of the first part shall fail to pay any or either of the above-mentioned proportions of the principal sum within the period above named for their payment, or shall fail to pay the quarterly interest at date when it may become due, it is hereby provided and agreed that the said William A. Coit shall be at liberty to proceed at once to sell the interest in said property conveyed at public auction to the highest bidder for cash, after having advertised such sale at three or more public places in Rowan county, and out of the proceeds of said sale he shall first pay such of the principal sum of said indebtedness as may then remain unpaid and the costs of this mort-
gage, and the balance, if any, he shall pay the said party or
269 its order; and it is further covenanted that until breach of the foregoing provisos the said party of the first part is to remain in quiet possession and enjoyment of said premises.

In witness whereof the parties to this indenture have hereto set their hands and seals the date above written.

THE NORTH CAROLINA GOLD
AMALGAMATING CO., [SEAL.]
By B. A. MITCHELL, *Attorney-in-Fact.* [SEAL.]

Signed, sealed, and delivered in the presence of—
H. A. LEMLY.

(Here follow acknowledgments.)

EXHIBIT "MITCHELL E."

This indenture, made the twenty-eighth day of August, in the year of [our] Lord one thousand eight hundred and seventy-five, between William A. Coit, of the city of Brooklyn, county of Kings, and State of New York, of the first part, and Moses L. Holmes and
Reuben J. Holmes, both of the county of Rowan and State
270 of North Carolina, of the second part, witnesseth: That whereas the North Carolina Gold Amalgamating Company, a corporation duly created under the laws of the State of North Carolina, did, on the tenth day of July, 1874, execute a mortgage to the said William A. Coit for the hereinafter-described real estate, fixtures, &c., for securing the payment of twenty-seven thousand six hundred and ninety dollars and fifty cents, with interest thereon since the 1st day of June, A. D. 1874; and whereas the said North

Carolina Gold Amalgamating Company has failed to pay said sum of money, or any part thereof; and whereas the said William A. Coit did, in accordance with the provisions of said mortgage, advertise the hereinafter-described real estate, fixtures, &c., at four public places in Rowan county for 30 days, and proceeded to sell the same to the highest bidder for ready money, at the court-house door, in the town of Salisbury, at twelve o'cl'k m. with the date of these presents, when and where Moses L. Holmes and Reuben J. Holmes became the last and highest bidders at the sum of twenty-five thousand dollars:

Now, for and in consideration of the premises, together with the consideration of twenty-five thousand dollars to the said William A. Coit in hand paid by the said Moses L. Holmes and Reuben J. Holmes, the receipt whereof is hereby acknowledged, the said William A. Coit has this day bargained, granted, and sold, and
271 by these presents doth bargain, grant, and sell, unto the said Moses L. Holmes and Reuben J. Holmes all that property, right, fixtures, and privileges lying, being, and situate in the county of Rowan, in State of North Carolina, the metes and boundaries of which are particularly set forth and described in a deed executed by Moses L. Holmes, Reuben J. Holmes, Ephraim Mauney, Valentine Mauney, B. B. Roberts, and D. A. Davis to North Carolina Gold Amalgamating Company, dated July 10th, 1874, and registered in the register's office of Rowan county, in book No. 48, page 397; to have and to hold to said Moses J. Holmes and Reuben J. Holmes, their heirs and assigns; and the said William A. Coit doth warrant and defend the title to all and singular the premises, fixtures, and privileges hereby conveyed to said Moses L. Holmes and Reuben J. Holmes and their heirs so far only as he is authorized by the terms of the hereinbefore recited mortgage and no further.

In witness whereof the said William A. Coit doth hereunto set his hand and seal the day and year above written.

W. A. COIT. [SEAL.]

Signed, sealed, and delivered in the presence of—
J. M. McCORKLE.

(Here follows the acknowledgment.)

272 And afterwards, to wit, on the 27th day of September, A. D. 1881, counsel for John Jay Smith, one of the defendants, comes into our said court here and files a suggestion of the death of the said Smith in the words following, to wit:

COIT *vs.* CRAM, JNO. JAY SMITH, *et al.*

And now, September 27th, 1881, the death of John Jay Smith, one of the defendants, is hereby suggested.

PIERCE ARCHER,
Of Counsel.

Endorsed: 52. April sess., 1880. U. S. C. C. Coit *vs.* Cram, Jno. Jay Smith, *et al.* Death of John Jay Smith suggested. Entered & filed September 27, 1881. Pierce Archer, of counsel.

273 And afterwards, to wit, on the 3rd day of October, A. D. 1882, this cause came on for hearing upon the pleadings and proofs, and, having been argued by counsel for the respective parties, the court held the same under advisement.

And afterwards, to wit, on the 7th day of October, A. D. 1882, the court, by Mr. Justice Bradley, file an opinion, which is in the words following, to wit:

The case of Coit *v.* The North Carolina Gold Amalgamating Company *et al.* has received our consideration, and we are now prepared to announce an opinion.

Complainant's counsel have, by a very fair presentation of authorities, based the claim against the stockholders upon the doctrine that the capital stock of a corporation is a trust fund which is liable for the claims of creditors, and the general proposition cannot, of course, be controverted—that is to say, it is liable after a corporation becomes insolvent. Prior to its insolvency a corporation holds its property as any other person, not in trust, but absolutely in the exercise of direct dominion and supreme control. But when a corporation becomes insolvent, then, according to the holding of courts of equity, its property becomes a trust fund for the payment of creditors. This is true, at all events, in cases where the property has not been subjected to execution or disposed of by way of assignment or other appropriation to particular debts. But the principles upon which trust is administered are not so simple as might at first be supposed. The trust embraces all the property of a corporation; embraces its real estate and its choses in action. If debts are due to the corporation they are part of that fund, and may be collected by the proper representative of the corporation, whether a trustee appointed by a court of equity, an assignee in bankruptcy, or other agent for the parties interested. But it is only those claims or assets which a company has that belong to the trust fund. Unpaid instalments on stock in the ordinary case are assets. They are claims which a company could enforce, and, therefore, they are claims which the creditors can compel the enforcement of through the instrumentality of a court of equity.

274 But there are cases in which arrangements have been made for the payment of stock which preclude the company itself from enforcing any further payment thereon, and yet in which, as to creditors who can fairly allege that they have relied, or whom the law presumes to have relied, upon the amount of capital stock of the company, the courts will impose a trust upon the subscription and set aside the arrangement made for its payment.

But that trust does not arise absolutely in every case where capital stock has been issued and where it has been settled for by arrangement with the company. It is not as if the stockholders had given their promissory notes for the amount, those notes being in the treasury of the company; but there are often equities to which the stockholders are entitled, on which they are entitled to stand.

Now, I suppose that in a case of stock dividend fairly made, in consideration of profits earned and of accumulations of the property

of the company, made simply to represent the property, and fairly representing the same, dividends made of stock as full-paid stock, without any dishonest purpose, without any purpose to deceive or defraud anybody, I suppose that in a case of that kind a court of chancery would have no power to revive a claim against the stockholders, because they had not advanced actual cash for the shares.

There are considerations, therefore, affecting this question of liability of stock on which money has not been actually paid which must be taken into consideration in order to do justice. It is not true that it is in the power of a creditor in every case, and in all cases, as a mere matter of right, to institute an inquiry as to valuation of the amount of the consideration given for stock. If the stock has been fairly created and paid for there is an end of trusts in favor of anybody. And this does not affect the general proposition that unpaid subscriptions of stock are a trust fund, to be administered for the benefit of creditors after a corporation becomes insolvent.

Now, in looking at the present case, as to the first thousand shares of stock, it seems to us manifest from the evidence in the case that the company—the associates who formed the company—regarded, and, so far as we can see, honestly regarded, their plant—the property that they contributed—as worth the hundred thousand dollars, for the amount of which stock was issued. They estimated some things as property which could not in law be regarded as such. The valuation of the charter as such was improper; it was improperly placed as a part of the capital stock of the company. The value of the charter could not form any item whatever in constituting its capital stock. But, as has been shown, dismissing that out of the case, there was still a valuation, as made by all the parties, which exceeded the hundred thousand dollars.

We think, therefore, that corporators, in such a case as that, ought not to be made liable individually for the debts of the company at the instance of creditors, because now, at a later day, the estimates fairly put upon the property at that time, have become modified by subsequent events and will not amount to the value which they set upon it. This does not assume that they have a right to fix any value they please; they must put an honest value; and, so far as the evidence in this case is concerned, we are brought to the conclusion that they did fix an honest value to what they put into this concern; certainly the corporation had no claim and could have maintained none against the corporators for this original subscription.

275 As to the new stock that was issued in May or June, 1874, it appears that the object of issuing the four thousand shares as a dividend to the stockholders was to balance the amount of stock given to Holmes for his land. They said, "Yes, we will give you 2,000 shares of stock for the land, provided it is balanced by 4,000 shares to the company (including the one thousand shares already held). In other words, when that property is put into our concern we will give you one-third interest in the whole 2,000 shares out of 6,000." Of course the other 4,000 belonging to them was to be sold to other parties. Whereas, if they had given him 2,000

shares of stock without any such adjustment it would have been giving him for his land two-thirds instead of one-third of the whole property of the company—that is, of the whole capital stock of the company. This they were unwilling to do. Now, it is true that they might have arranged that matter in a different way. They might have said, "We will give you five hundred shares of additional stock for your land; then you will stand one-third to two-thirds. Then you will have half as much stock as we." But that was probably not satisfactory to him; they entered into the agreement; they had conversed about it; they had talked it over, and he wanted a larger nominal amount, and they said: "If you have a larger nominal amount it must be balanced by more stock." That is evidently the nature of the transaction. I do not see any evidence of any intent to defraud anybody in such a transaction as that.

But there is the public. Have not they some rights if you make such a transaction as that? Certainly. And after that stock was increased to 6,000 shares and 4,000 shares had been assigned to the associates in lieu of their 1,000 shares, there is no doubt that all the creditors becoming such after that time and fairly to be presumed as calculating upon the amount of capital which the company announced as having, must be held entitled to enforce the doctrine of the courts with regard to trusts.

They did not advance any money for the additional 3,000 shares received, and they would probably be held bound as to such creditors to pay the amount of their stock. But even then if it could be shown that this property was really worth 6,000 shares of stock, which was issued for it, there would be a question—there being no fraud and the stock representing only its value in property—whether they could be held liable. Still the evidence that it was not of that value, arising from the fact that Howes took 2,000 shares for the property acquired, would probably be conclusive that it was not, but that the arrangement was merely one of adjustment.

But does that rule, with regard to holding the stockholders liable for the amount of these new shares, hold with regard to all the creditors of the company? Does it hold with regard to a party who is cognizant of the whole arrangement; who knows all about it, and who knows that the stock is issued as a dividend? Does it hold with regard to such a party who receives a novation of his debt—of an old debt—and receives the same security for it that he had before? It seems to us that this would be unjust; that it would be a fraud on the stockholders, and not on the creditor.

We have looked at the evidence to see whether Mr. Coit, the plaintiff, was cognizant of the transaction and of its character, and
276 we are brought to the conclusion that he was; that he knew all about it. He had his son there as an agent on the ground all the time, and had his superintendent there, who knew all about it, and we find that the resolution for increasing the stock, which was undoubtedly passed after previous verbal communications between the parties, was passed on the 11th of May, 1874, authorizing the directors to issue the stock for the purpose of making this arrangement, and on the 18th, at an adjourned meeting, the directors

passed their resolution to that effect. Then, on the 20th of May—right along in the same period—an agreement was entered into with Howes for the purchase of his land, reciting the whole transaction, reciting that the previous mortgages—Coit's among the rest—were to stand as before, only Coit's to be surrendered and renewed. Then, on the 26th of May, part of the same transaction, comes the agreement with Coit that he will surrender his mortgage and take a new one, and give up the stock of the old company. That agreement is carried out on the 26th of July afterwards by his executing deeds to the company, and by their executing to him a mortgage. In the meantime the stock that was to be issued was issued. The first certificate is dated July 3, 1874. It was during the latter half of May and in June that this whole transaction was going on. If a legal presumption did not arise that Mr. Coit knew of the transaction at that time, and there was no proof that he knew of it, it would present a different case. But we have evidence that he did know. Now, what is that evidence? We have the evidence of General Cram, who says, when asked to explain the connection of Mr. Coit with the company: "When the company purchased the Gold Hill mining estate of Howes the company gave acceptances to Howes in part payment, one amounting to $1,000, payable in some months. This was transferred by Howes to Coit. At the time he purchased Coit had held a second mortgage. In the terms for the purchase it was agreed between the company and Coit that Coit shall cancel his old mortgage and take a new one, and so on." Then Mr. Mitchell, who was intimately connected with the matter, says that Mr. Coit was perfectly familiar with all the transactions. Mr. Coit was perfectly familiar with the original formation of the company and with the increase of the stock of the company to $1,000,000; he was a party to it, and the company could not, and would not, have purchased the Gold Hill property and increased its stock without his concurrence and consent. Mr. Coit, both personally and through his agent, was made acquainted with the designs, purposes, and intentions of the company in the purchase agreement. The agreement with him was to that effect; that he was to be placed afterwards in the same position," etc. Now, unless this evidence is rebutted—and Mr. Coit does not come forward to contradict it in the slightest degree—unless this evidence is rebutted, it seems to us perfectly clear that the conclusion must be deduced that Mr. Coit knew of this whole transaction and acquiesced in it. And since he received the same security he had before, and perhaps an additional security—because the agreement between him and the company says that he was to have all their new property, new buildings, &c., and the mansion house—how can he complain of the issue of the stock? Under these circumstances, to make the stock, or the supposed subscriptions to the stock—for the counsel is right in saying that stock issued to a party, which he receives, is the same, although he subscribed for it—to make the stockholders liable personally to Mr. Coit, on the ground that it became a trust fund for his benefit, would be, instead of promoting justice, promoting injustice. It would enable Mr. Coit, by a mere trick of law, to take money

out of the pockets of these men which he never expected or relied on.

277 In deciding cases like this we must look into the nature of the transaction, the mutual relations of the parties, and the general habits of the business community in reference to transactions of this kind. We must not put strained and forced constructions upon the acts of parties which will promote the ends of injustice rather than those of justice.

We are therefore brought to the conclusion on the whole case (and there is evidence to which we have not adverted) that this bill cannot be sustained, but must be dismissed.

We have thus merely indicated, in a conversational way, the general line of thought upon which we have based our conclusion, and have not thought it necessary to advert to other considerations tending in the same direction, such as the fact that the title to the land purchased of Howes could not be perfected, and the issue of new stock was revoked, and the parties reinstated to their original shares.

Bill dismissed.

278 And afterwards, to wit, on the 7th day of October, A. D. 1882, the court entered the following decree, to wit:

COIT
vs.
NORTH CAROLINA GOLD AMALGAMATING CO. *et al.* } April Sess., 1880. No. 52.

And now, to wit, this 7th day of October, A. D. 1882, this cause came on to be heard on pleadings and proofs and was argued by counsel for the respective parties, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed that the bill of complaint herein be, and the same is hereby, dismissed with costs, to be taxed.

279 And afterwards, to wit, on the 14th day of October, A. D. 1882, the complainant, by his counsel, comes into our said court here and prays an appeal to the Supreme Court of the United States, and the same is allowed, in the words following, to wit:

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania. In Equity.

Between—

WILLIAM A. COIT
and
THE NORTH CAROLINA GOLD AMALGAMATING COMPANY *et al.* } April Session, 1880. No. 52.

And now, to wit, October 14th, 1882, Edward F. Hoffman, Esq., of counsel for complainant, appears in open court and appeals to the Supreme Court of the United States from the decree of this court dismissing the bill of complaint, with costs.

The same is allowed and security ordered in the sum of three hundred dollars ($300).

280 (Endorsed:) 52. April session, 1880. Coit *vs.* The North Carolina Gold Amalgamating Company *et al.* Complainant's appeal. Entered & filed October 14, 1882. Edw. F. Hoffman, Geo. Biddle, Chas. Hart.

281 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

WILLIAM A. COIT *vs.* THE NORTH CAROLINA GOLD AMALGAMATING CO., THOMAS J. CRAM, and LLOYD P. SMITH *et al.*	April Sess., 1880. No. 52.

Know all men by these presents that we, John W. Hoffman, No. 259 South 17th St., and William J. Barr, No. 1606 Spruce St., of the city of Philadelphia and State of Pennsylvania, are held and firmly bound unto the above-named The North Carolina Gold Amalgamating Co. *et al.* in the sum of three hundred dollars ($300), to be paid to the said The North Carolina Gold Amalgamating Co. *et al.*, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 23rd day of October, A. D. 1882.

Whereas lately at a circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in the said court between William A. Coit, complainant, and The North Carolina Gold Amalgamating Co. *et al.*, respondents, a final decree was rendered against the said William A. Coit, and the said William A. Coit having taken an appeal, which appeal has been allowed by the said circuit court, to the Supreme Court of the United States to reverse the said decree in the aforesaid suit:

282 Now, the condition of this obligation is such that if the said William A. Coit shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his appeal good, then this obligation to be null and void; otherwise to remain in full force and virtue.

JOHN W. HOFFMAN. [L. S.]
WILLIAM J. BARR. [L. S.]

Sealed and delivered in the presence of—
SAMUEL BELL.
WM. A. WILLIAMSON.

Approved. W. McKENNAN,
Circuit Judge.

[Endorsed:] No. 52. April sess., 1880. Circuit court United States. Coit *vs.* The North Carolina Gold Amalgamating Co. *et al.* Bond *sur* appeal. Filed October 27, 1882.

283 THE UNITED STATES OF AMERICA, *ss:*

To The North Carolina Gold Amalgamating Company and Thomas J. Cram and Lloyd P. Smith, Christopher Bockius, Thomas F. Neilson, Samuel K. Ashton, Carrie Boggs, Emily Boggs, Virginia Boggs, Emmons T. Mockridge, Allen Middleton, Jr., A. G. Elliott, B. A. Mitchell, Henry H. Barton, John Jay Smith, Mary A. Neilson, M. H. Cobb, Jacob D. Mitchell, Barton H. Jenks, Martin Landenberger, Ann Mitchell, William D. Buck, John R. Hall, and Ferdinand Allen; F. M. Lewis, ex'r of John Hulme, dec'd; B. K. Jamison & Co., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein William A. Coit is appellant and you are appellees, to show cause, if any there be, why the decree rendered against said appellant, as in said appeal mentioned, shall not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 27th day of October, in the year of our Lord one thousand eight hundred and eighty-two.

W. McKENNAN,
Cir. Judge.

284 We accept service of the within citation.

R. C. McMURTRIE,
For the North Carolina Gold Amalgamating Company, Thomas J. Cram, and Lloyd P. Smith.
PIERCE ARCHER,
For The N. C. Gold Co. & for Cram & for L. P. Smith; also for (3) *Boggs & Jno. Jay Smith (Dec'd).*
SAMUEL DICKSON,
For Emmons T. Mockridge.
WM. C. BULLITT,
For F. Mortimer Lewis, Executor of John Hulme, Dec'd.
GEO. BULL, *For B. K. Jamison & Co.*
MORGAN & LEWIS, *For William B. Buck.*
H. T. FENTON, *Att'y for Barton H. Jenks.*
GEO. JUNKIN, *Att'y for H. H. Barton.*
THOS. F. NEILSON & W. A. HUSBAND,
Att'ys for Mary A. Neilson, Thos. F. Neilson, A. G. Elliott; Jas. B. Mitchell, Ex. Jas. G. Mitchell, Dec.; Allen Middleton, Jacob G. Mitchell, John R. Hall, [In pencil:] *Wm. B. Buck.*
L. R. FLETCHER.
JAS. B. MITCHELL.
W. HENRY SMITH, *For Def't Cobb.*

285 UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } *ss:*

I, Samuel Bell, clerk of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, do

hereby certify the foregoing to be a true and faithful copy of the record and proceedings of the said circuit court in a certain case therein lately depending between William A. Coit, complainant, and The North Carolina Gold Amalgamating Company, Thomas J. Cram, and Lloyd P. Smith *et al.*, respondents.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at Philadelphia, in said district, this 9th day of June, A. D. 1883, and in the 107th year of the Independence of the United States.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk Circuit Court U. S.

Endorsed on cover: E. Pennsylvania C. C. U. S. No. 56. William A. Coit, appellant, *vs.* The North Carolina Gold Amalgamating Company *et al.* Filed 24th September, 1883.

hereby certify the foregoing to be a true and faithful copy of the record and proceedings of the said circuit court in a certain case therein lately depending between William A. Coit, complainant, and The North Carolina Gold Amalgamating Company, Thomas J. Cram, and Lloyd P. Smith *et al.*, respondents.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at Philadelphia, in said district, this 9th day of June, A. D. 1883, and in the 107th year of the Independence of the United States.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk Circuit Court U. S.

Endorsed on cover: E. Pennsylvania C. C. U. S. No. 56. William A. Coit, appellant, *vs.* The North Carolina Gold Amalgamating Company *et al.* Filed 24th September, 1883.

119-348

FILED
NOV 16 1886
JAMES H. McKENNEY
Clerk

October Term, 1886. No. 56.

Supreme Court of the United States

WILLIAM A. COIT, Appellant,

vs.

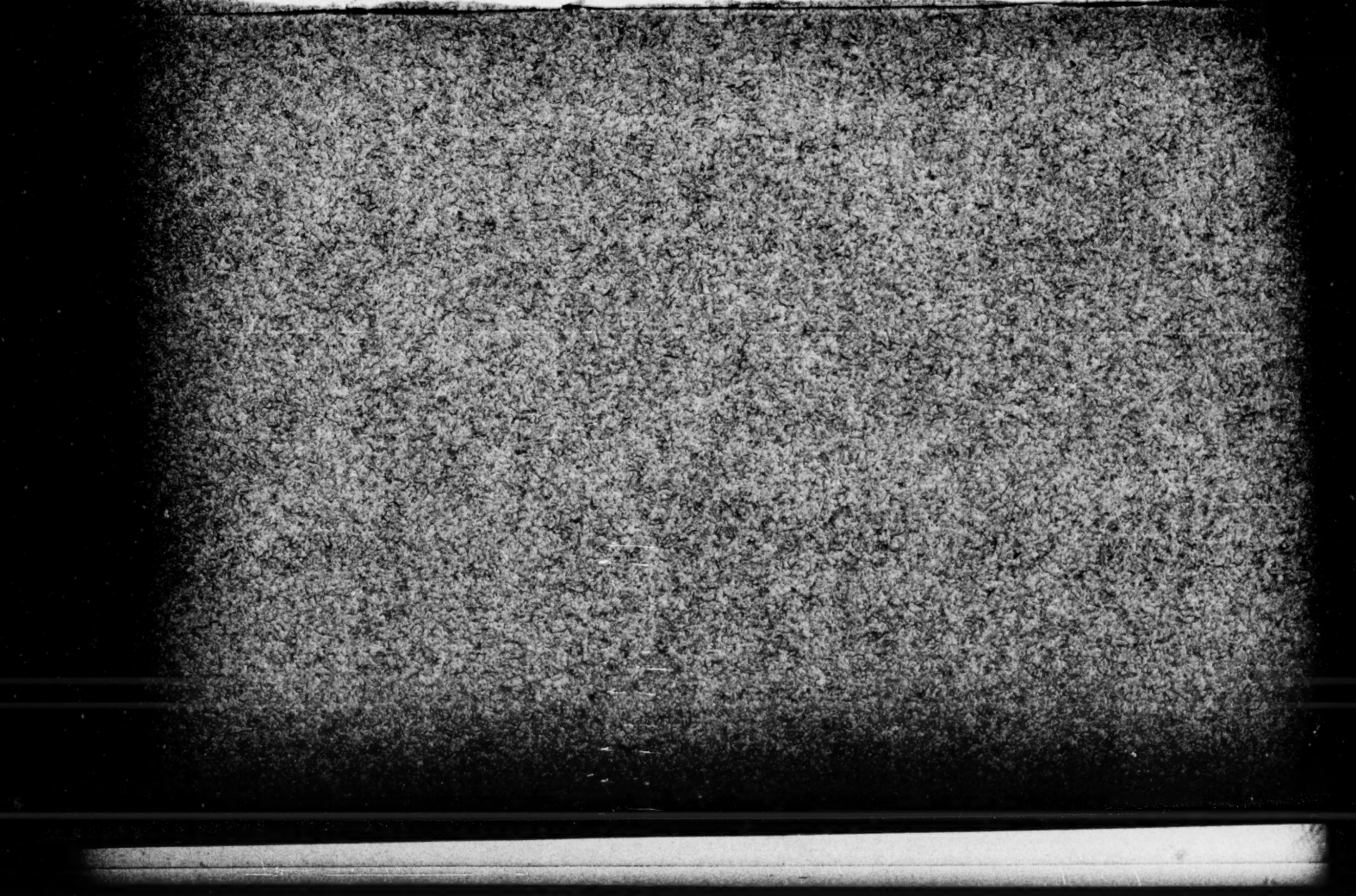
THE NORTH CAROLINA GOLD AMALGAMATING COMPANY et al.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
For the Eastern District of Pennsylvania.

Appellant's Brief of Argument.

EDWARD F. HOFFMAN,
For Appellant.

DANDO PRINTING AND PUBLISHING CO., 24 S. THIRD ST., PHILA.



STATEMENT OF THE CASE.

This was a bill in equity brought by W. A. Coit against the North Carolina Gold Amalgamating Company, an insolvent corporation, to collect from the unpaid stock subscriptions due the said company the amount of a judgment obtained by Coit against the said company.

The claim of the appellant is founded on a judgment for $5489.82 obtained against the company in the Common Pleas Court of Philadelphia on the tenth day of May, 1879, on two four months' drafts —a draft for $1000, dated June 1, 1874, and a draft for $3000, dated August 15, 1874.

The $3000 draft was given by the company in payment of the first installment of the principal of a mortgage executed by the company to Coit. The draft for $1000 was given by the company in payment of a debt of that amount due by one Howes to Coit, which debt the company assumed. (Transcript of Record, p. 34.)

The corporation defendant was organized under an act of the State of North Carolina dated January 30, 1874. By their charter (Record, p. 93) the minimum capital stock is fixed at $100,000, divided into one thousand shares of $100 each, with power to increase the capital to $2,500,000 or twenty-five thousand shares of $100 each. The charter further provided "that the subscription to the capital stock of said company shall and may be paid in such installments and in such manner and such property, real or personal, as a majority of the corporators may determine." The corporators previous to obtaining this charter had been engaged in mining

operations, conducting these transactions as an unincorporated association under the same name and title, which they subsequently assumed as a corporation.

Upon the incorporation of the company the capital stock of $100,000 was subscribed for by estimating the property of the association at the value of $100,000 and dividing the one thousand shares representing the same among the original members in proportion to their respective interests. Each director placing his own valuation, they averaged it at $100,000. (See Record, p. 89.)

It is contended on behalf of appellant that this valuation was excessive and improper and that it was in greater part made up of appraisement of franchises that could not be taken in execution and which had not been proven to be of value and the sort of property which in contemplation of law can be regarded as assets for the payment of stock.

On the twenty-second day of May, 1874, the said corporation increased its capital stock to $1,000,000 or ten thousand shares, of a par value of $100 each. Of this increased issue four thousand shares were divided among the holders of the original capital stock, upon the return and re-delivery by them to the company for cancellation of the shares held by them, they receiving four shares of the new and increased capital stock for each and every share returned for cancellation. Certificates of this new issue of the stock were duly issued to the holders of the original shares on or about the twenty-second day of May, 1874, and accepted by them. (Record, p. 87.) On November 2 and 5, 1874 (Record, p. 103–6), this increase of the capital stock from $100,000 to $1,000,000 was annulled, the shares outstanding called in and the capital stock reinstated to $100,000, thus cancelling the three thousand shares of capital

stock held by the original stockholders from May, 1874, to November, 1874.

The questions before the court were two-fold: (1) Was there liability on the part of the stockholders on the first one thousand shares? The only question on this first branch of the case being, was the property for which this stock was issued properly valued? (2) Was there liability to the appellant as to the increased issue of four thousand shares, it being contended by counsel and held by the court below that from the evidence in the cause the rule of law which would be applied at the instance of an ordinary creditor could not be invoked by Coit on account of facts in evidence in the case?

ASSIGNMENT OF ERRORS RELIED ON.

The decree dismissing the plaintiff's bill. (See Decree, Record, p. 141.)

The appellant further alleges:

(1) An error in a computation of figures by the court, apparent on the record, which error if corrected would show a liability to plaintiffs. It is as follows: The court found: "They estimated some things as property which could not in law be regarded as such. The valuation of the charter as such was improper; it was improperly placed as a part of the capital stock of the company. The value of the charter could not form any item whatever in constituting its capital stock. But, as has been shown, dismissing that out of the case, there was still a valuation made by all the parties which exceeded the $100,000." (See Record, p. 138.)

In this finding the court made an error of mathematical calculation. The proof is, that the average valuation, including the charter, was $137,000; the valuation of the charter, taking the average, was $43,000; deducting $43,000 from $137,000 you have $94,000, leaving, according to the court's finding, $6000 due on the minimum capital stock. (See Record, p. 89.)

(2) An error in the rule of law applied by the court to the valuation by the directors of the company of their own individual property for the placing of the minimum capital stock. The court held, in effect, that if the directors were honest in intention in valuing their own property, and thought they were placing a fair value on it, it did not matter if they were mistaken in fact as to the real

value. (See Record, p. 138.) It is submitted that the market value is the test.

(3) The court erred in treating an argumentative statement of one of the witnesses, taken under objection and unsupported by facts, as evidence of and as establishing a fact in the case. The court quotes the testimony of the witness Mitchell (from whose testimony the fact alluded is found) almost verbatim in the opinion, and these few lines quoted are the only testimony to sustain the finding: "That the appellant Coit knew of an increased stock issue by defendants." The portion of the opinion is as follows: "Then Mr. Mitchell, who was intimately connected with the matter, says that Mr. Coit was perfectly familiar with all the transactions. Mr. Coit was perfectly familiar with the original formation of the company and with the increase of the stock of the company to $1,000,000; he was a party to it, and the company could not and would not have purchased the Gold Hill property and increased its stock without his concurrence and consent. Mr. Coit both personally and through his agent was made acquainted with the designs and purposes and intentions of the company in the purchase agreement. Now unless this evidence is rebutted," &c. (Record, p. 140.) By looking at the testimony of the witness (p. 83) it will be seen that the opinion mainly quotes the very words of the witness.

It is respectfully submitted that these assertions of conclusions by the witness (taken under objection), without any facts stated by the witness sustaining these conclusions, were improperly regarded as evidence by the learned court below. And it was error to regard them as evidence from which a fact could be found.

(4) The court erred in treating appellant's claim

as a claim secured by a mortgage on real estate when the opinion and record show that the claim was based on drafts which were part of the floating debt of the company.

(5) The court erred in holding that the appellant Coit was debarred from his rights as a creditor against the stockholders as to the increased issue of capital stock.

ARGUMENT ON BEHALF OF APPELLANT.

The Record shows that throwing out the valuation of the charter, which was disallowed by the court, the minimum capital stock was only paid for to the extent of $94,000. The valuation of all the items, including item (6) (franchises conferred by charter), being $137,000. If we exclude from this valuation the average value put upon the charter, namely, $43,000, we have as the valuation of the property given in payment of the whole capital stock, $137,000 — $43,000 = $94,000. As to the other items valued, it is contended on behalf of appellant, that it was incumbent on the defendants to show that they were estimated at sums approximating their market value. They failed to produce any such evidence. The testimony of plaintiff's witnesses estimates items (2) and (5) at $15,000 (Record, p. 48), and the valuation of defendants $25,000 (Record, p. 89).

The items of valuation by defendants are:

(1) Patent right for working on the ore in Gold Hill Mine.

(2) Machinery equipments, fixings of Old Dominion Mill, Va.

(3) Lease mill site for ten years, eight acres at Gold Hill Mine, N. C.

(4) Contract for furnishing ores to new mill at Gold Hill, 20 tons per day.

(5) New mill, well on to completion.

(6) Franchises conferred by charter.

The items, exclusive of the charter, are of two classes, those conceded by the plaintiff to have value, but alleged to be over valued, and those which

plaintiff contends, in contemplation of law, the corporators were not entitled to value at all.

To the first class belong (1) the Crosby process; (2) (3) the mill and machinery. To the second class belong the two contracts with Howes, valued at about $50,000. It is contended that this court should look at the testimony as to the first two items, because the circuit court did not find their value as a fact, but applied a rule of law which the plaintiffs allege is error, "That if the corporators were honest in their intention in estimating the value of these items, they are not responsible for an error in judgment." It is submitted if this is not the rule of law (but the law is "That corporators estimating their own property must prove actual value"), then this court will look at the testimony to ascertain a fact not found by the circuit court—the fair value of these items. As to the items in the second class this court will look at the evidence to ascertain, as a question of law, whether they are such rights as can be valued at all by corporators in placing the capital stock of a company.

The Crosby process had not been sufficiently tested to be valued for that one mine at the sum of $30,000. The average value of the mill and machinery as found by the defendants is $25,000, and it is estimated by the witness produced by the appellant at $15,000. Then there are the two contracts with Howes (Record, p. 115): a permission to the defendants to put their mill on his land, and an agreement that Howes was to deliver them ore for their mill, for which they were to pay him a royalty. These agreements amounted to nothing more than an arrangement between the owner of the mine and the owner of the mill. Howes was to furnish the ore and the company defendant was to extract the gold. Howes regarded his royalty

as a full consideration for the rights conferred by him. They had to place their mill on his land, and Howes regarded the royalty contracted for as full compensation in lieu of other rent. To value these items was placing a valuation on prospective profits, clearly not in law the subject of valuation for the placing of the capital stock of a company. Howes' testimony as to these items is on page 48 of the Record, and the agreement between the company and Howes on page 115.

[illegible] to consider that the de-

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"In Tasker *vs.* Wallace, 6 Daly (N. Y.), page 365, Daly, C. J., in speaking of stock issued for a patent, says, 'The transfer to the company of patents, the value of which as it turned out was nothing but "at the time," to use the language of the witness, "was considered invaluable" was not in my opinion a payment in money within the meaning and intent of the statutes. (The People *vs.* Troy Hose Co., 44 Barb., 634, 635; Haviland *vs.* Chace, 39 *Id.*, 283.) The transfer of a patent which had no ascertained value, which in the language of the witness, "as it turned out was worth nothing" cannot be regarded as money or its equivalent, because those engaged in the management of the company believe at the time it is valuable, and receive it after organization upon some fixed estimate of its value between them and the subscriber as so much money. Before a thing can be regarded as money or its equivalent, it must have an actual, positive, and ascertained value; a value so thoroughly ascertained and fixed at the time that it can at once be changed into money, of which it is regarded as the equivalent. The value of a patent right depends upon the invention. The pecuniary value of it is a mere matter of anticipation until the utility of the invention is established by practical use, and is a source of ascertainable and known pecuniary profit.'"

The facts shown by the testimony were that in the month of May, 1874, the company determined to purchase the land from Howes and raise an additional amount of capital. They accordingly increased the capital stock from one thousand to ten thousand shares. Of this increased capital stock Howes was given two thousand shares for his land, four thousand shares were issued to the holders of the original one thousand shares who surrendered their first holdings, and four thousand shares remained in the treasury. (Record, p. 79.)

The stock then stood as follows:

Howes	2,000	shares.
Stockholders	4,000	"
Treasury of the company . .	4,000	"
Total capital stock . .	10,000	"

On November 5, 1874, this issue was revoked and cancelled. It is evident that of the four thousand shares which the stockholders had in their possession, one thousand were paid for by the original property valued by the corporators and three thousand were not paid for at all. The two thousand shares held by Howes were paid for to the extent of the value of the land conveyed. The court, while not deciding the liability of the holders of this issue as to general creditors, took the position that there was no liability on the part of the holders of this stock to Coit, for the reason that he knew of this issue and assented to it. It is respectfully suggested that there was not any evidence legally admissible to justify this finding of fact. It was not alleged that Coit was a party or assented to the *cancellation*, or that it was suggested that the

stockholders were not to be liable, and it is respectfully submitted that Coit was in exactly the same position as any other creditor and that the same rule of law applies to Coit as to any other creditor.

Coit held a mortgage against the land. When the company purchased the land from Howes he accepted the company as mortgagors. There is no evidence that Coit knew anything about the particulars of the transaction with Howes; nothing but the bare statement of one of the witnesses, without the production of a paper of any kind or any detail showing how he came to know it.

The testimony on this point is as follows (testimony of B. A. Mitchell, Record, p. 83):

"Q. What knowledge had Mr. Coit of the shifting and change of the stock as to values, &c?

"A. (Under appellant's objection.) Mr. Coit was perfectly familiar with the original formation of the company and with the increase of the stock of the company to $1,000,000, was a party to it, and the company could not and would not have purchased the Gold Hill property and increased its stock without his concurrence and consent, which was in this wise: Mr. Coit held a third mortgage through a trustee, who was his son, against that property for over $27,000, given to the trustee for him by Amos Howes, the then owner or supposed owner of that property. This was given in the year 1873. When our company entered into this agreement with Mr. Howes in May, 1874, which agreement is in evidence (Record, p. 117), to purchase the Gold Hill property, in the way and manner I have before stated, part of that negotiation and agreement was for the purpose for getting in the titles to the company; that, under the first mortgage, a sale of the property should be made, and that mortgages of like amount should be given to the respective parties

holding the mortgages for their several and respective amounts, and in their several respective positions and priorities. To carry that into effect agreements were entered into between the company and Messrs. Holmes, and with Mr. Coit, the plaintiff. Mr. Coit, both personally and through his accredited agent and counsel, Mr. Bradford, was made acquainted with the designs, purposes and intentions of the company in the purchase of that property. An agreement with him by the company to the effect that he was to be placed, after his original mortgage was satisfied, in the same position by the company. Accordingly, Mr. Coit made a deed to the company of all his interest and rights under that mortgage to the company, the trustee joining in it, in which deed was recited his agreement with the company, and the company gave him, at the same time, its mortgage, which not only embraced the Gold Hill property, but also the new mill property and works of the company, other property, and the Mansion House, which they had acquired under their purchase from Howes. This new mortgage was dated in the month of July, 1874, and was payable in installments; the first installment, being $3000, became payable in September, 1874. Mr. Coit also, in addition to his mortgage, received from the company an accepted draft for $1000 made by Amos Howes on the company. When that installment became due the company was unable to pay it, and he took from the company its draft for the amount, payable in four months, which became due the next December. But the president of the company, for the company, paid Mr. Coit in cash $553.81, being the interest upon the mortgage. Mr. Coit sold the property under that mortgage in the year 1875 to the Holmes for $25,000 in cash and notes. Four years afterwards Mr. Coit sued

this company for that installment and his $1000 draft, and obtained judgment for over $5000 in our Court of Common Pleas No. 1. And for that judgment the present suit is brought.

"Q. What knowledge had Mr. Coit of that property, its location and its advantages?

"Objected to.

"A. Mr. Coit I met at Gold Hill in 1874. He had his son residing there as his representative, and had been from his statements to me interested with Mr. Howes in the working of the Gold Hill property for several years previous to my acquaintance with him or Mr. Howes, and had also a Mr. Noble there as superintendent, representing him in the working of the mines," &c.

It is submitted that this testimony, objected to at the time, is in the first place too vague and argumentative to be considered at all. Second, that if it is considered it could only establish the fact that Coit knew the stock was increased from one thousand to ten thousand shares. The court found in effect that Coit knew there was a so-called stock dividend issued on the purchase of the land by the company from Howes. *Not a word is said about a dividend.* There is no evidence in the entire record that even Howes was told that the so-called stock dividend was issued. No mention of the so-called dividend appears in any of the conveyances put in evidence by the defendants. It would appear on the contrary that the issuing of this so-called dividend was not mentioned to Howes by the company and the theory of the court below was that Coit had the same knowledge as Howes. The resolution of the stockholders of May 11, 1874 (Record, p. 86), authorizes the purchase of the land from Howes "for as much of the capital stock as may be necessary, not exceeding five thousand

shares." When they purchased the land from Howes for two thousand shares they declared a dividend of three thousand shares (see Record, p. 87.) In the absence of any testimony (and there was not any testimony), this would make it appear that Howes was not told of this stock dividend because they had been willing to expend the amount of stock declared as a dividend in the purchase of his land.

There is not an iota of evidence to sustain the following portion of the opinion of the court:

They said, "Yes, we will give you two thousand shares of stock for the land, provided it is balanced by four thousand shares to the company (including the one thousand already held). In other words, when that property is put into our concern we will give you one-third interest in the whole two thousand shares out of six thousand." Instead of this being the case it would appear that they were prepared to buy the land from Howes for five thousand shares and when they succeeded in buying the land for two thousand shares they divided the remaining three thousand shares which they were authorized to pay for it, without letting Howes know they were going to do so.

But it is contended by appellant, that even if Coit had known that the stock was increased from one thousand to ten thousand shares, and if he had also known that the alleged dividend of three thousand shares was made, that even if—for the sake of argument—all this were conceded, that not even under these circumstances would Coit be debarred of the right to demand assessment of this stock upon the insolvency of the company. Coit did not look to any particular fund to secure his debt. The debt, the subject of this suit, was upon the drafts of the company. These notes were accepted by Coit

in payment of an acknowledged debt of the company long before their insolvency. He had no claim against the stock subscriptions until all the other property of the company had been exhausted and its insolvency established. How could he waive a right which he did not have, and not being a stockholder, how was he to be presumed to know whether or not the alleged dividend had been earned?

It is therefore respectfully submitted:

(1) That the minimum capital stock of the company has only been paid for to the extent of the proper values of items Nos. (1), (2) and (5). The right to use the Crosby patent. The value of the mill and the value of the machinery, items (3), (4) and (5). The contracts between Howes and the company, for the working of the mine, and the charter not being in law admissible subjects of valuation.

(2) That the increased issue of capital stock has not been paid for to any extent whatever and that it is therefore assets for the payment of debts, the release by the stockholders in November, 1874, after appellant's debt had been contracted, being a void act as to him as well as all other creditors.

Edwards & O. Hoffman

119-348

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No. 56. October Term, 1886.

Supreme Court of the United States.

William A. Coit,
Appellant,

vs.

The North Carolina Gold Company *et al.*,
Appellees.

Appeal from the Circuit Court of the United States for Eastern District of Pennsylvania.

Appellees' Brief of Argument.

PIERCE ARCHER,
R. C. McMURTRIE,
For Appellees.

ALLEN, LANE & SCOTT, PRINTERS, PHILADELPHIA.

Supreme Court of the United States.

Coit, Appellant,

vs.

The North Carolina Gold Company et al., *Appellees.*

BRIEF FOR APPELLEES.

The appellant Coit was a party to the very transaction which he now complains of, and he knew all about it.

He heard the witnesses testify to it, and yet he was not called to contradict them.

He now claims as a creditor to enforce as a stock subscription—a *stock dividend* declared in May, 1874, which was recalled, canceled, annulled, and surrendered to the company in November of the *same year.*

His debt was an old one, being a mortgage for installments of the original purchase long before the stock dividend was created. He gave no credit on the faith of the new stock, his claim being for an antecedent debt.

The case is, therefore, that of a creditor of a corporation proving insolvent claiming that certain stock subscriptions have never been so paid, that he is entitled to compel further payment.

In the organization property was accepted in satisfaction of the amounts agreed to be paid for shares. And it is said these

were overvalued, or that something was valued that ought not to have been.

Then the parties increased the capital, the old shareholders getting a larger number of shares, but a less relative interest. In about six months this scheme was canceled, and affairs restored to the original shape.

Whilst this latter scheme was on foot the company gave drafts for an old mortgage debt, and it is on these the claim is made.

The court found as a fact that the first arrangement was fairly and honestly made, and hence there was no liability on that ground.

The court found that the plaintiff was fully aware of the second arrangement, and hence was not misled nor induced to become a creditor by means of the increase of the capital, and hence there was no liability on that ground.

Points for Argument.

All the errors assigned, saving one (the second), are to findings of fact. The first is that the court erred in finding that the property was fairly valued which was transferred for shares. The third is that an erroneous inference was made from a statement of a witness as to the plaintiff's knowledge of the mode in which the stock was increased. The fourth is for an error in fact in finding what was the ground of the plaintiff's claim.

If there are errors of fact this court has no jurisdiction. Revised Statutes, sections 1011, 1013. It is not a question of right or wrong, or of more or less certainty or doubt but of *jurisdiction.*

It is said (Error 1), that the error is shown by looking at a calculation. This is not a correct statement, but if it were is there any doubt that what is the true result of any arithmetical calculation is a matter of fact? If not, where is the line drawn, and how clear or simple, obscure or complicated must be the process to require the court to correct the error? The resultant of all the accounts of the Bank of England is no more a matter of fact than the one decided.

As to the third, it is impossible to question that this is a

mere question of fact. It is said the statement was argumentative. Why an argumentative statement of a fact ceases to be evidence of the fact is not explained. But the statement had nothing in it of argumentativeness. It was a direct averment that a man knew all about a certain transaction, and the man who is the plaintiff himself did not deny or dispute it.

1. If the court intend to hear the cause *de novo* on the merits, as they must do if either the first, third, or fourth assignments are considered, we submit the following: The ground on which the court *probably* relied in respect to the fact involved in the second assignment of error is unnoticed.

It was proved that two of the corporators (and they are the two on whose behalf *we* appear) contributed cash for their shares on the basis of the valuation of the property, which it is sought to treat as a nullity, and they did this with absolute knowledge of everything connected with the transaction. When it is shown that property has been actually dealt with for cash it is absurd to say that it is not sufficient to test the sufficiency of the value that the property was taken in payment of subscription for shares with the consent of those who paid the par in cash.

This fact appears on the record. On folio 33 (page 15) the answer sets up *That these defendants consented to convert their claims against the corporators for money due them, into shares at par.* It is proved as to Cram, folio 114 (page 58), folio 116 (page 59), as to Smith, folio 117 (page 60), folio 118 (page 61). These are all the defendants we represent, but the fact applies to all. The appellant assumes that the only proof of valuation is in the estimates from which an average was taken: folio 150 (page 80)—which did the judge rely on? probably the more satisfactory evidence. But the whole ground of the claim is utterly misapprehended. It is supposed that in dealing with transactions between shareholders and the company, that the creditors are to be treated wholly different from any other class of creditors, whereas the only ground for holding the subscriber liable, although he is released by his creditor who is the debtor is one common to all debtors and creditors. It is this—a creditor cannot release his debtor with-

out receiving value when he thereby deprives himself of the means of paying his own debts. It is not a peculiar rule, but an alteration of a universal rule. It may be said that in addition there is a representation that the capital is what it is represented to be. This really is but the same question. In this case there is moreover an express authority to do what was done. And there was notice to the world of this. It is not the implied power to take property in payment of subscriptions, which all corporations have, but an express authority to sanction the subscribed property for shares: folio 176, page 94. There is, however, one conclusive answer to all arguments to support the claim, viz., that the plaintiff before he became a creditor had notice of the scheme and mode of organizing, and in what the capital consisted. To permit a creditor to repudiate a settlement between his debtor and that debtor's debtor which was known to the creditor when he became a creditor, is manifestly unjust and absurd. That Coit knew of the mode of organizing in the first instance, and of the mode of the intended increase of the capital, is proved and is not denied or disputed: folio 155, page 83.

The fourth error is not founded in fact. It is true the claim is on drafts given in 1874, but these were for an antecedent debt and the interest thereon: folio 156, page 84.

There is one error, the third, assigned to a point of law. Was the judge right in saying that if the price put on the property was honestly agreed on that is sufficient and the standard is not the market value? If this be not law, it is impossible to deal under such an authority conferred in a charter. But the question does not arise if the fact that the plaintiff knew of the facts before he became a creditor is an answer to his claim, as the court held it to be.

In Ochiltree *vs.* R. R., 21 Wallace, 252, this court said: "The plaintiff trusted this corporation and the members composing it, at the time the contract was made. It cannot be said that he gave credit beyond this, for what right had he to assume that other stock would be issued? The law gave him a right to subject existing stockholders, with whom the debt was contracted, to the liability.

Suppose the plaintiff has all that he trusted and no additional stock was issued, he has no right to complain: page 253.

That is the present case precisely.

PIERCE ARCHER,
R. C. McMURTRIE,
For Appellees.

William A. Coit, of New York,

vs.

The North Carolina Gold Amalgamating Company et al.

Circuit Court of United States, Eastern District of Pennsylvania.

1. The capital stock of a corporation is a trust fund for creditors, and upon its insolvency the subscriptions to stock can be enforced for the benefit of unpaid creditors.
2. *Semble*, that there are cases where by reason of special agreement the company could not enforce the contract, yet as to creditors who have been misled by the amount of the capital stock the trust will be imposed for their benefit.
3. The promoters of a mining company transferred certain property to the company at an agreed valuation and took payment in stock of the company. The valuation, even if excessive through error of judgment, if honestly made according to the charter, as in the case in hand, cannot afterwards be questioned by creditors or the company.
4. A company desiring to purchase additional property to be paid for in stock, resolved, in May, 1874, under power in their charter, to increase their capital stock from $100,000 to $1,000,000, and after paying $200,000 in stock to the vendor, reserving to the company $400,000 of stock to be sold to pay off its debts, and the balance, $400,000, to be allotted to the stockholders to be paid for not in cash but by a surrender of their old certificates of $100,000. In November following the project of increasing the stock was abandoned as impracticable. All the new stock was surrendered to and accepted by the company and the old stock returned to the stockholders. *Held*, there being no fraud in fact intended, that there was no liability for the increased subscription by the stockholders.
5. If creditors had given credit to the company during the period of the existence of the increased stock outstanding—on the faith of the subscriptions to the capital stock—a different question would be presented, and they would probably be held to their subscriptions, unless

it could be shown that the additional property acquired was really worth the six thousand shares issued for it, there being no fraud.

6. There is no liability to a creditor of the company for such increased subscriptions, who accepted from the company a novation of his old mortgage claim against the land owned by the company, who knew that the stock was only increased as a dividend, who received the same security for his debt, was cognizant of and party to the whole transaction and consented thereto, no trust arises in favor of such a creditor.

In Equity.

Oral opinion by Mr. Justice BRADLEY, October 19th, 1882:—

The case of Coit *vs.* The North Carolina Gold Amalgamating Company *et al.* has received our consideration, and we are now prepared to announce an opinion.

Complainant's counsel have, by a very fair presentation of authorities, based the claim against the stockholders upon the doctrine that the capital stock of a corporation is a trust fund which is liable for the claims of creditors, and the general proposition cannot, of course, be controverted. That is to say, it is liable after a corporation becomes insolvent. Prior to its insolvency a corporation holds its property as any other person, not in trust, but absolutely in the exercise of direct dominion and supreme control. But when a corporation becomes insolvent, then, according to the holding of courts of equity, its property becomes a trust fund for the payment of creditors. This is true at all events in cases where the property has not been subjected to execution or disposed of by way of assignment or other appropriation to particular debts. But the principles upon which trust is administered are not so simple as might at first be supposed. The trust embraces all the property of a corporation; embraces its real estate, and its choses in action; if debts are due to the corporation they are part of that fund, and may be collected by the proper representative of the corporation, whether a trustee appointed by a court of equity, an assignee in bankruptcy, or other agent for the parties interested. But it is only those claims or assets which a company has that belong to the trust fund. Unpaid installments on stock in the ordinary case are assets;

they are claims which a company could enforce, and therefore they are claims which the creditors can compel the enforcement of through the instrumentality of a court of equity.

But there are cases in which arrangements have been made for the payment of stock, which preclude the company itself from enforcing any further payment thereon, and yet in which as to creditors who can fairly allege that they have relied, or whom the law presumes to have relied upon the amount of capital stock of the company, the courts will impose a trust upon the subscription and set aside the arrangement made for its payment.

But that trust does not arise absolutely in every case where capital stock has been issued, and where it has been settled for by arrangement with the company. It is not as if the stockholders had given their promissory notes for the amount, those notes being in the treasury of the company; but there are often equities to which the stockholders are entitled, on which they are entitled to stand.

Now I suppose that in a case of stock dividend fairly made, in consideration of profits earned, and of accumulations of the property of the company—made simply to represent the property, and fairly representing the same, dividends made of stock as full paid stock, without any dishonest purpose, without any purpose to deceive or defraud any body, I suppose that in a case of that kind a court of chancery would have no power to revive a claim against the stockholders, because they had not advanced actual cash for the shares.

There are considerations therefore affecting this question of liability for stock on which money has not been actually paid, which must be taken into consideration in order to do justice. It is not true that it is in the power of a creditor in every case, and in all cases, as a mere matter of right, to institute an inquiry as to valuation of the amount of the consideration given for stock. If the stock has been fairly created and paid for there is an end of trusts in favor of any body. And this does not affect the general proposition that unpaid subscriptions of stock are a trust fund to be administered for the benefit of creditors after a corporation becomes insolvent.

Now, in looking at the present case, as to the first thousand shares of stock, it seems to us manifest from the evidence in the case, that the company—the associates who formed the company—regarded, and so far as we can see, honestly regarded their plant—the property that they contributed—as worth the $100,000, for the amount of which stock was issued. They estimated some things as property which could not in law be regarded as such. The valuation of the charter as such was improper; it was improperly placed as a part of the capital stock of the company. The value of the charter could not form any item whatever in constituting its capital stock. But, as has been shown, dismissing that out of the case, there was still a valuation, as made by all the parties, which exceeded the $100,000.

We think, therefore, that corporators, in such a case as that, ought not to be made liable individually for the debts of the company, at the instance of creditors, because now, at a later day, the estimates fairly put upon the property at that time have become modified by subsequent events, and will not amount to the value which they set upon it. This does not assume that they have a right to fix any value they please; they must put an honest value, and so far as the evidence in this case is concerned, we are brought to the conclusion that they did fix an honest value to what they put into this concern; certainly the corporation had no claim, and could have maintained none against the corporators for this original subscription.

As to the new stock that was issued in May or June, 1874, it appears that the object of issuing the four thousand shares as a dividend to the stockholders was to balance the amount of stock given to Holmes for his land. They said, "Yes, we will give you two thousand shares of stock for the land, provided it is balanced by four thousand shares to the company (including the one thousand shares already held). In other words, when that property is put into our concern we will give you one-third interest in the whole two thousand shares out of six thousand." Of course the other four thousand belonging to them was to be sold to other parties. Whereas, if

they had given him two thousand shares of stock without any such adjustment it would have been giving him for his land two-thirds instead of one-third of the whole property of the company; that is, of the whole capital stock of the company. This they were unwilling to do. Now it is true that they might have arranged that matter in a different way. They might have said, "We will give you five hundred shares of additional stock for your land; then you will stand one-third to two-thirds. Then you will have half as much stock as we." But that was probably not satisfactory to him; they entered into the agreement; they had conversed about it; they had talked it over; and he wanted a larger nominal amount; and they said, "If you have a larger nominal amount it must be balanced by more stock." That is evidently the nature of the transaction. I do not see any evidence of any intent to defraud anybody in such a transaction as that.

But there is the public. Have not they some rights if you make such a transaction as that? Certainly. And after that stock was increased to six thousand shares, and four thousand shares had been assigned to the associates in lieu of their one thousand shares, there is no doubt that all the creditors becoming such after that time, and fairly to be presumed as calculating upon the amount of capital which the company announced as having, must be held entitled to enforce the doctrine of the courts with regard to trusts.

They did not advance any money for the additional three thousand shares received, and they would probably be held bound as to such creditors to pay the amount of their stock. But even then if it could be shown that this property was really worth six thousand shares of stock, which was issued for it, there would be a question—there being no fraud, and the stock representing only its value in property—whether they could be held liable. Still the evidence that it was not of the value, arising from the fact that Howes took two thousand shares for the property acquired, would probably be conclusive that it was not, but that the arrangement was merely one of adjustment.

But does that rule, with regard to holding the stockholders

liable for the amount of these new shares, hold with regard to all the creditors of the company? Does it hold with regard to a party who is cognizant of the whole arrangement; who knows all about it, and who knows that the stock is issued as a dividend? Does it hold with regard to such a party, who receives a novation of his debt—of an old debt—and receives the same security for it that he had before? It seems to us that this would be unjust; that it would be a fraud on the stockholders and not on the creditor.

We have looked at the evidence to see whether Mr. Coit, the plaintiff, was cognizant of the transaction and of its character, and we are brought to the conclusion that he was; that he knew all about it. He had his son there as an agent on the ground all the time, and had his superintendent there, who knew all about it, and we find that the resolution for increasing the stock, which was undoubtedly passed after previous verbal communications between the parties, was passed on the 11th of May, 1874, authorizing the directors to issue the stock for the purpose of making this arrangement, and on the 18th, at an adjourned meeting, the directors passed their resolution to that effect. Then, on the 20th of May—right along in the same period—an agreement was entered into with Howes, for the purchase of his land, reciting the whole transaction, reciting that the previous mortgages—Coit's among the rest—were to stand as before, only Coit's to be surrendered and renewed. Then, on the 26th of May, part of the same transaction, comes the agreement with Coit, that he will surrender his mortgage and take a new one, and give up the stock of the old company. That agreement is carried out on the 26th of July afterwards by his executing deeds to the company, and by their executing to him a mortgage. In the meantime, the stock that was to be issued was issued. The first certificate is dated July 3d, 1874. It was during the latter half of May, and in June, that this whole transaction was going on. If a legal presumption did not arise that Mr. Coit knew of the transaction at that time, and there was no proof that he knew of it it would present a different case. But we have evidence that he did know.

Now, what is that evidence? We have the evidence of General Cram, who says, when asked to explain the connection of Mr. Coit with the company: "When the company purchased the Gold Hill Mining estate of Howes, the company gave acceptances to Howes in part payment; one amounting to $1000, payable in some months. This was transferred by Howes to Coit. At the time he purchased, Coit had held a second mortgage. In the terms for the purchase it was agreed between the company and Coit that Coit shall cancel his old mortgage and take a new one. And so on." Then Mr. Mitchell, who was intimately connected with the matter, says that Mr. Coit was perfectly familiar with all the transactions. Mr. Coit was perfectly familiar with the original formation of the company, and with the increase of the stock of the company to $1,000,000; he was a party to it, and the company could not, and would not, have purchased the Gold Hill property, and increased its stock without his concurrence and consent. Mr. Coit, both personally and through his agent, was made acquainted with the designs, purposes, and intentions of the company in the purchase agreement. The agreement with him was to that effect; that he was to be placed afterwards in the same position, &c." Now, unless this evidence is rebutted—and Mr. Coit does not come forward to contradict it in the slightest degree—unless this evidence is rebutted, it seems to us perfectly clear that the conclusion must be deduced that Mr. Coit knew of this whole transaction, and acquiesced in it. And since he received the same security he had before, and perhaps an additional security—because the agreement between him and the company says, that he was to have all their new property, new buildings, &c., and the mansion house—how can he complain of the issue of the stock? Under these circumstances, to make the stock, or the supposed subscriptions to the stock—for the counsel is right in saying that stock issued to a party, which he receives, is the same, although he subscribed for it—to make the stockholders liable personally to Mr. Coit, on the ground that it became a trust fund for his benefit, would be, instead of promoting justice, promoting injustice. It would enable Mr. Coit, by a mere trick of law, to

take money out of the pockets of these men, which he never expected or relied on.

In deciding cases like this we must look into the nature of the transaction, the mutual relations of the parties, and the general habits of the business community in reference to transactions of this kind. We must not put strained and forced constructions upon the acts of parties which will promote the ends of injustice rather than those of justice.

We are therefore brought to the conclusion on the whole case (and there is evidence to which we have not adverted) that this bill cannot be sustained, but must be dismissed.

We have thus merely indicated, in a conversational way, the general line of thought upon which we have based our conclusion, and have not thought it necessary to advert to other considerations tending in the same direction, such as the fact that the title to the land purchased of Howes could not be perfected, and the issue of new stock was revoked, and the parties reinstated to their original shares.

Bill dismissed.

Messrs. Charles Hart, Hoffman & Biddle, for plaintiff.

Messrs. Pierce Archer and *R. C. McMurtrie*, for Gold Company & Cram and Smith.

Messrs. Junkin, Bull, Husbands, Smith, Fletcher, Bullitt & Farley, for stockholders.

SUPPLEMENTAL.

The shortness of the notice of the intention to argue this case, which we were told in March last would be abandoned when reached, is an excuse for this supplementary brief.

References to the evidence of the following facts:—

Origin of plaintiff's debt was a mortgage, pages 135–156, 157–167. His present claim is on drafts for an installment of the mortgage and interest, pages 135, 136–155, 156–167–181. Plaintiff's knowledge of the circumstances of the organization and how the contributions were made and with what property, pages 151–84, 155–270. His knowledge of the mode of increasing the nominal capital, pages 155, 156–197–252. Cram & Smith's contributions were in money, they agreeing to put in cash as against the contributions of property by the others, pages 113, 114–117, 118.

Additional Authorities.

The rule relied on has no application to pre-existing creditors or to any one not misled. 2 Morowitz on Corp., section 803; *Re* St. Ins. Co., 14 Fed. Rep., 28; *Re* Telegraph Cons. Co., L. R. 10 Eq., 384; 4 Louisa. Ann., 87; 9 Alabama, 742; 7 Louisiana An., 363.

The rule has no application to stock of a mining company because of its fluctuating and uncertain character. It is arbitrarily fixed, and was not intended or supposed to have the slightest relation to real value. It is always conjectural, often imaginary. 7 Sawyer, 30; 8 Sawyer, 366; 2 Morowitz, section 830, note 3 (2d ed.)